

United States
Circuit Court of Appeals
for the Ninth Circuit.

In the Matter of the Petition of THE TERRITORY OF HAWAII to Register and Confirm Its Title to the AHUPUAA OF KIOLOKU, in the District of Kau, Island and County of Hawaii, Territory of Hawaii.

THE TERRITORY OF HAWAII,

Appellant,

vs.

HUTCHINSON SUGAR PLANTATION COMPANY, Limited,

Appellee.

Transcript of Record.

Upon Appeal from the Supreme Court of the Territory of Hawaii.

FILED

DEC 3 - 1920

R. D. MONCKTON,
Clerk



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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In the Supreme Court of the Territory of Hawaii.
LAND COURT PETITION No. 283.

In the Matter of the Petition of the TERRITORY
OF HAWAII to Register and Confirm Its
Title to the AHUPUAA OF KIOLOKU in
the District of Kau, Island and County of
Hawaii, Territory of Hawaii.

Application for Writ of Error.

To the Clerk of the Supreme Court.

Please issue a writ of error in the above-entitled case to the Registrar of the Land Court of the Territory of Hawaii, on behalf of said Territory of Hawaii, returnable to the Supreme Court.

Dated at Honolulu, T. H., July 26, 1919.

THE TERRITORY OF HAWAII,
Plaintiff in Error.

By J. LIGHTFOOT,
First Deputy Attorney General. [1*]

Service of a Copy of the Within Petition for Writ of Error this Day Admitted. Dated Honolulu, July 26, 1919. Robertson & Olson, Attorneys for Contestant, Defendant in Error. [2]

Issued for Service July 26, 1919, at 8:50 A. M.
J. A. Thompson, Clerk.

Returned July 26, 1919, at 9:43 A. M. J. A.
Thompson, Clerk.

*Page-number appearing at foot of page of original certified Transcript
of Record.

[Endorsed]: No. 1212. Supreme Court Territory of Hawaii. In the Matter of the Petition of the Territory of Hawaii to Register and Confirm its Title to the Ahupuaa of Kioloku in the District of Kau, Island and County of Hawaii, Territory of Hawaii. Rec'd & Filed in the Supreme Court, July 26, 1919, at 8:45 o'clock A. M. J. A. Thompson, Clerk.

In the Supreme Court of the Territory of Hawaii.

LAND COURT PETITION No. 283.

**In The Matter of the Petition of the TERRITORY
OF HAWAII to Register and Confirm Its
Title to the AHUPUAA OF KIOLOKU in
the District of Kau, Island and County of
Hawaii, Territory of Hawaii.**

Assignment of Errors.

Assignment No. 1.

The Court erred in receiving in evidence a letter of W. D. Alexander to the Minister of the Interior, Contestant's Exhibit No. 1. (Tr. p. 18).

Assignment No. 2.

The Court erred in receiving in evidence Land Commission Award No. 9659, to Kekahuna, Contestant's Exhibit No. 2. (Tr. p. 22.)

Assignment No. 3.

The Court erred in receiving in evidence Royal Patent No. 2656, to Kaiahua, Contestant's Exhibit No. 3. (Tr. p. 24).

Assignment No. 4.

The Court erred in receiving in evidence Royal Patent [3] No. 2748, to Kaleiku, Contestant's Exhibit No. 4. (Tr. p. 26).

Assignment No. 5.

The Court erred in receiving in evidence record of Boundary Commissioner, Volume A-1, page 399, referring to the boundaries of Kioloku, Contestant's Exhibit No. 5. (Tr. p. 29).

Assignment No. 6.

The Court erred in receiving in evidence Boundary Certificate No. 57, Contestant's Exhibit No. 6. (Tr. p. 30).

Assignment No. 7.

The Court erred in receiving in evidence Boundary Certificate No. 74, Contestant's Exhibit No. 7. (Tr. p. 31).

Assignment No. 8.

The Court erred in receiving Certificate of Boundaries No. 91, Contestant's Exhibit No. 8. (Tr. p. 33).

Assignment No. 9.

The Court erred in receiving in evidence Partition Deed, dated July 3, 1870, Contestant's Exhibit No. 12. (Tr. p. 95).

Assignment No. 10.

The Court erred in refusing to receive in evidence a certain document, being a list of unassigned lands, produced [4] from the custody of the Board of Archives of the Territory of Hawaii, and endorsed as Exhibit "D" in the case of Thurston v. Bishop, dated May 1, 1888, said exhibit being marked for

identification as Territory's Exhibit — for identification. (Tr. p. 131).

Assignment No. 11.

The Court erred in refusing to receive in evidence a document produced from the Archives of the Territory purporting to be an exhibit in the said case of Thurston v. Bishop, giving a list and estimated areas of unassigned lands, including Kioloku, which document was marked Territory's Exhibit — for identification. (Tr. p. 134).

Assignment No. 12.

The Court erred in holding and deciding as follows:

"There remains the possibility, therefore, that evidence of an award of Kioloku to Keohokalole actually exists in the records of the Land Commission." (Decision, p. 3.)

Assignment No. 13.

The Court erred in holding and deciding as follows:

"The evidence adduced also discloses a number of corroborating circumstances of more or less cogency tending to support the contention of the claimant. In this connection it is deemed pertinent to observe that as early as 1852 Kioloku seems to have been generally known as 'konohiki' land, that is to say, privately owned land. Tending to show this there are old maps and surveys, and a description of a kuleana within the boundaries of Kioloku, and surveys and descriptions of other lands adjoining this ahupuaa, whereby Kioloku was referred to as 'konohiki,' and not as 'unassigned' or 'Government' land, which, as contradistinguished from

'konohiki', would have been properly designated [5] by the term ordinarily used with reference to such land, namely, 'Aupuni.''" (Decision, pp. 4 and 5).

Assignment No. 14.

The Court erred in holding and deciding as follows:

"The record of the Boundary Commissioner for the Third Judicial Circuit (R. A. Lyman) shows a proceeding, brought in 1873, under the statute for the settlement of the boundaries of lands which had been awarded by their ancient Hawaiian names, without surveyed descriptions. That proceeding was had upon the application of David Kalakaua (who claimed title through the above-mentioned partition deed) for the settlement and adjudication of the boundaries of the Ahupuaa of Kioloku. The record shows that the owners of the adjoining lands had been notified of the proceeding as required by law. In response to the notice, as appears by the Commissioner's record, His Majesty King Lunalilo (owner of the adjoining Ahupuaa of Honuapo) represented by J. G. Hoapili, and the Government (owner of the adjoining Ahupuaa of Kaunamano) represented by W. T. Martin, appeared. The hearing proceeded, testimony was taken and a judgment defining the boundaries of the land by a surveyed description was entered. (Boundary Certificate No. 57). The respective owners of the adjoining lands of Honuapo and Kaunamano had a right to be heard lest their

lands should be encroached upon by the judgment which would be entered defining the boundaries of Kioloku. No objection having been made by either of them to the hearing of the application of Kalakaua it would seem that it amounted to an admission on the part of the King (Lunalilo), as the owner of Honuapo, and of the Government, as the owner of Kaunamano, that Kalakaua had the right to maintain the proceeding as the owner of Kioloku. This piece of evidence, as I view it, is important and of much probative force, for the reason that all the parties concerned, the Commissioner, the King, the Government's representative, as well as Kalakaua, were in a position to know the exact status of Kioloku and the precise nature of Kalakaua's title. (Decision, pp. 5 and 6.)

Assignment No. 15.

The Court erred in holding and deciding as follows:

[6]

"The petitioner places great reliance upon the statement by Kalakaua in his application of June 23, 1873, to the effect that no award had been issued to his mother, Ane Keohokalole. However, the conduct and all the acts of all the persons who have ever had anything to do with Kioloku (except as to this one statement made by Kalakaua), including the various Governments of these Islands, throughout the entire history of Kioloku, down to the filing of the petition herein, were and are inconsistent with the alleged ownership of the petitioner, and consistent with

the alleged ownership of the claimant. In this respect the petitioner, at most, can claim but one fact as against a long chain of other facts in evidence which supports the undisturbed and long continued possession of Keohokalole and her successors in interest, which, to my mind, strongly tend to show that Kioloku was privately owned. If Kalakaua was not the owner of Kioloku, why did the Boundary Commissioner, with the acquiescence of the Government, recognize him as the owner, and settle the boundaries of the land upon his application? Why was Kalakaua's application favorably acted upon only as to Kioloku if, as a matter of fact, it belonged no more to him than did the other lands named in his application? There must be some reason or explanation for the distinction made between Kioloku and the other lands. There are, apparently two theories, either of which is reasonable. One is, that Kalakaua was mistaken, and the surveyors and Government officials, who evidently believed that Keohokalole had acquired title, were right. This would satisfactorily account for the fact that Kalakaua was given a certificate of boundaries for the land, and the further fact that the land has ever since been regarded, treated and taxed as private property. The other theory upon which a solution of the matter may be had is, that upon the filing by Kalakaua of his application an arrangement or settlement by way of compromise was entered into between him and the Govern-

ment whereby his title to Kioloku would be recognized and confirmed in consideration of his withdrawing or not pressing his application as to the other lands named, direct evidence of which arrangement or settlement cannot now be found." (Decision, pp. 9 and 10).

Assignment No. 16.

The Court erred in holding and deciding as follows:

"Upon this phase of the case it would seem that the doctrine of presumptions, which permeates the remedial side of our system of [7] jurisprudence, may appropriately be invoked. This doctrine applies to contracts, settlements, or compromises, as well as to the issuance of grants of lands and other muniments of title, when the circumstances involved (there being no direct evidence of the fact) affords a natural, reasonable and logical explanation of the state of facts shown in evidence and leading to a proper and just conclusion." (Decision, p. 10).

Assignment No. 17.

The Court erred in holding and deciding as follows:

"Upon the question as to whether there must be proof that the award or grant was actually made, the opinion of the court in *Fletcher v. Fuller* (120 U. S. 534, 30 L. Ed. 759), referred to in the *Chavez* case, *supra*, at page 259 (L. Ed.) is as follows, and makes it clear that such proof is not required." (Decision, p. 12).

Assignment No. 18.

The Court erred in holding and deciding as follows:

"As to payment of taxes. The payment of

taxes on land is evidence of a claim of title by one in possession in cases between individuals.

O. R. & L. Co. v. Kaili, 22 Haw. 673, 678; Holtzman v. Douglas, 120 U. S. 278, 284 (42 L. Ed. 466, 468).

“Such payment is also potent evidence against the Government which has levied and collected taxes upon land, as it practically amounts to an admission of title in the party who has paid the taxes.” (Decision, p. 13).

Assignment No. 19.

The Court erred in holding and deciding as follows:

“Where taxes have been collected upon land for a long period of time by the former Government of the country it is no proper function of a new Government to attempt to disturb the [8] possession and uproot the title of the party from whom taxes have been collected, and other facts and circumstances indicate strongly that title was obtained from the Government, merely because evidence of the original award which might have been issued over sixty years before the title was questioned, cannot be found.” (Decision, p. 14).

Assignment No. 20.

The Court erred in holding and deciding as follows:

“The petitioner contends that ‘it is clearly proven that no grant was ever made of the land in question; that it therefore falls within the category of unassigned lands, and, under the authority of Thurston v. Bishop, 7 Haw. 421, remains the property of the Government not-

withstanding any claim of title by reason of long continuous occupation of the land by the plantation.'

"As I view the case of Thurston v. Bishop, the only point it decided was that the statute of limitations does not run against the state. The claimant does not rest its case upon the statute of limitations, but upon the presumption of a grant." (Decision, p. 14).

Assignment No. 21.

The Court erred in holding and deciding as follows:

"There is a very clear distinction between the application of the doctrine of the statute of limitations and that of the presumption of a grant. The former does not operate against the sovereign, while the latter does. The presumption of a grant exists independently of the statute of limitations." (Decision, pp. 14 and 15).

Assignment No. 22.

The Court erred in holding and deciding as follows:

"In conclusion, after a careful consideration of all the evidence herein, and the law applicable thereto, I find that the Territory of Hawaii, the petitioner herein, has no right, title, or interest whatsoever in or to the Ahupuaa of Kioloku, the land in question, and, therefore, has no right to have the same registered." (Decision, p. 17).

[9]

Assignment No. 23.

The Court erred in dismissing the petition herein. (Decision, p. 17).

Assignment No. 24.

The Court erred in entering a decree finding that the petitioner has no right, title or interest whatsoever in or to the Ahupuaa of Kioloku, the land in question.

Assignment No. 25.

The Court erred in entering a decree dismissing the petition herein.

All pleadings, files, exhibits, transcript of the testimony taken, and the Clerk's Minutes of the proceedings had herein are hereby referred to and made a part of this Assignment of Errors.

Dated, Honolulu, T. H., July 26, 1919.

THE TERRITORY OF HAWAII,

Plaintiff in Error,

By J. LIGHTFOOT,

First Deputy Attorney General. [10]

Service of a copy of the within Assignment of Errors this day admitted. Dated Honolulu, July 26, 1919..

ROBERTSON & OLSON,

Attorneys for Defendant in Error. [11]

Issued for service July 26, 1919, at 8:50 A. M.
J. A. Thompson, Clerk.

Returned July 26, 1919, at 9:43 A. M.. J. A. Thompson, Clerk.

[Endorsed]: No. 1212. Supreme Court Territory of Hawaii. In the Matter of the Petition of the Territory of Hawaii to Register and Confirm its Title to the Ahupuaa of Kioloku in the District of Kau, Island and County of Hawaii, Territory of Hawaii. Assignment of Errors. Rec'd & Filed in the Su-

preme Court July 26, 1919, at 8:45 o'clock A. M.
J. A. Thompson, Clerk.

In the Supreme Court of the Territory of Hawaii.

LAND COURT PETITION No. 283.

In the Matter of the Petition of the TERRITORY
OF HAWAII to Register and Confirm Its
Title to the AHUPUAA OF KIOLOKU in
the District of Kau, Island and County of
Hawaii, Territory of Hawaii.

Notice of Application for Writ of Error.

To the Hutchinson Sugar Plantation Company, and
to Messrs. Robertson & Olson, its Attorneys;

Please take notice that application has this day
been made for a writ of error from the Supreme
Court of the Territory of Hawaii to the Land
Court of the Territory of Hawaii.

Please also find attached hereto copy of assign-
ment of errors in said case.

Dated Honolulu, T. H., July 26, 1919.

THE TERRITORY OF HAWAII,
Plaintiff in Error.

By J. LIGHTFOOT,
First Deputy Attorney General. [12]

Service of a copy of the within Notice of Appli-
cation for Writ of Error this day admitted.

Dated Honolulu, July 26, 1919.

ROBERTSON & OLSON,
Attorneys for Defendant in Error. [13]

Issued for service July 26, 1919, at 8:50 A. M.

J. A. THOMPSON,
Clerk.

Returned July 26, 1919, at 9:43 A. M.

J. A. THOMPSON,
Clerk.

[Endorsed]: No. 1212. Supreme Court Territory of Hawaii. In the Matter of the Petition of the Territory of Hawaii to Register and Confirm Its Title to the Ahupuaa of Kioloku in the District of Kau, Island and County of Hawaii, Territory of Hawaii. Notice of Application for Writ of Error. Rec'd & Filed in the Supreme Court July 26, 1919, at 8:45 o'clock A. M. J. A. Thompson, Clerk.

In the Supreme Court of the Territory of Hawaii.

LAND COURT PETITION No. 283.

In the Matter of the Petition of the **TERRITORY OF HAWAII** to Register and Confirm **Its** Title to the **AHUPUAA OF KILOKU** in the District of Kau, Island and County of Hawaii, Territory of Hawaii.

Writ of Error.

To the Registrar of the Land Court, of the Territory of Hawaii:

Application having been made on behalf of said Territory of Hawaii, for a writ of error in the above-entitled case, you are commanded forthwith to send to the Supreme Court the record in said case.

WITNESS the Honorable James L. Coke, Chief Justice of the Supreme Court, this 26th day of July, 1919.

[Seal]

J. A. THOMPSON,

Clerk of the Supreme Court.

Received the foregoing writ of error on this 26th day of July, 1919, at 9:15 o'clock A. M.

ARTHUR E. RESTARICK,

Registrar of the Land Court.

To the clerk of the Supreme Court:

The execution of the within writ of error appears by the record hereto annexed.

Honolulu, August. 14, 1919.

ARTHUR E. RESTARICK,

Registrar of the Land Court. [14]

Service of a copy of the within Writ of Error this day admitted.

Dated Honolulu, July 26, 1919.

Attorneys for Defendant in Error. [15]

Returned August 14, 1919, at 2:00 P. M.

J. A. THOMPSON,

Clerk.

[Endorsed]: No. 1212. Supreme Court Territory of Hawaii. In the Matter of the Petition of the Territory of Hawaii to Register and Confirm Its Title to the Ahupuaa of Kioloku in the District of Kau, Island and County of Hawaii, Territory of Hawaii. Filed and Issued July 26, 1919, at 8:45 A. M.

J. A. THOMPSON,

Clerk.

In the Land Court of the Territory of Hawaii.

PETITION NO. 283.

In the Matter of the Petition of the TERRITORY
OF HAWAII to Register and Confirm Its
Title to the AHUPUAA OF KIOLOKU, in
the District of Kau, Island and County of
Hawaii, Territory of Hawaii.

Petition for Registration of Title.

To the Honorable William L. Whitney, Judge of
the Land Court of the Territory of Hawaii.

The Territory of Hawaii, by its Commissioner of
Public Lands, hereby applies to have the land here-
inafter described brought under the operation and
provisions of Chapter 154 of the Revised Laws of
Hawaii as amended, and to have its title thereto
registered and confirmed, and the said Commis-
sioner of Public Lands, by his Attorney, Arthur G.
Smith, Deputy Attorney General, declares:

I.

That the Territory of Hawaii has the power of
disposition of the legal estate in fee simple absolute
of the Ahupuaa of Kioloku, situate in the District
of Kau, Island and County of Hawaii, Territory of
Hawaii, and more particularly described as fol-
lows:—[16]

Beginning at a “W” on rock on a small knoll in
Fern, the true azimuth and distance to “Kala”
Trig. Station being $1^{\circ} 30' 263.0$ feet and from this
Station the true azimuth and distance to Govern-
ment survey Trig. Station “Kapuna” is $15^{\circ} 23'$

6439.0 feet, and running by true azimuths:

1. $135^{\circ} 10'$ 2712.0 feet along the land of Kaunamano;
2. $140^{\circ} 23'$ 1927.0 feet along the land of Kaunamano;
3. $141^{\circ} 23'$ 1954.0 feet along the land of Kaunamano;
4. $139^{\circ} 45'$ 2065.0 feet along the land of Kaunamano;
5. $188^{\circ} 53'$ 79.0 feet to a place called Napumaia;
6. $230^{\circ} 00'$ 1848.0 feet along the land of Kaalaiki;
7. $335^{\circ} 20'$ 2317.0 feet along the land of Kaalaiki;
8. Thence along the middle of a stream along the land of Kaalaiki; the direct azimuth and distance being:— $309^{\circ} 10'$ 2785.0 feet;
9. Thence still along the middle of the stream along the land of Kaalaiki, the direct azimuth and distance being:— $279^{\circ} 06'$ 1242.0 feet; from this point the true azimuth and distance to a Forest Reserve Monument is $239^{\circ} 00'$ 35.0 feet;
10. $328^{\circ} 00'$ 2370.0 feet along the land of Honuapo to a “W” marked in bed-rock of gulch at a place called Kamakaili, about 15 feet north of a waterhole;
11. $352^{\circ} 20'$ 575.0 feet along the land of Honuapo to a “+” on set stone in fern;
12. $315^{\circ} 02'$ 1924.0 feet along the land of Honuapo to a “+” on set stone;
13. $310^{\circ} 50'$ 1744.0 feet along the land of Honuapo to a “D” on large solid stone at a place called

Kuapapa; from this point the true azimuth and distance to Government Survey Trig. Station "Kumuohelo" is $218^{\circ} 12' 4963.5$ feet; [17]

14. $299^{\circ} 25'$ 1484.0 feet along the land of Honuapo;

15. $313^{\circ} 05'$ 244.0 feet along the land of Honuapo;

16. $295^{\circ} 30'$ 1304.0 feet along the land of Honuapo to a "W" on set stone by stone wall; from this point the true azimuth and distance to "Maakau" Trig. Station is $209^{\circ} 20' 45.0$ feet and from said station the true azimuth and distance to Government Survey Trig. Station "Kumuohelo" is $184^{\circ} 30' 5324.8$ feet;

17. $297^{\circ} 23'$ 3007.0 feet along the land of Honuapo;

18. $297^{\circ} 38'$ 1220.0 feet along the land of Honuapo;

19. $298^{\circ} 00'$ 1275.0 feet along the land of Honuapo;

20. $5^{\circ} 05'$ 348.0 feet along L. C. A. 9659 to Kekahuna;

21. $304^{\circ} 50'$ 828.0 feet along L. C. A. 9659 to Kekahuna;

22. $205^{\circ} 35'$ 429.0 feet along L. C. A. 9659 to Kekahuna to a pipe;

23. $277^{\circ} 00'$ 2660.0 feet along the land of Honuapo to a "W" cut in pahoehoe;

24. $277^{\circ} 00'$ 127.0 feet along the land of Honuapo to Pohakau Point; at the sea;

25. Thence along the sea coast, the direct azimuth and distance being $45^{\circ} 45'$ 1870.0 feet;

26. $108^{\circ} 05'$ 133.0 feet up Pohina Bluff along Grant 2656 to Kaiahua to a + on set stone in wall;

27. $108^{\circ} 05'$ 540.0 feet along Grant 2656 to Kaiahua:

28. $108^{\circ} 05'$ 1404.0 feet along Grant 2748 to Kalkiakau;

29. $116^{\circ} 50'$ 500.0 feet along L. C. A. 9660 to Kaahui and Lot 29 of the Kaunamano Homesteads;

30. $113^{\circ} 15'$ 551.0 feet along Lot 29 of the Kaunamano Homesteads;

31. $109^{\circ} 15'$ 1280.0 feet along Lot 27A of the Kaunamano Homesteads; [18]

32. $114^{\circ} 38'$ 1535.0 feet along Lot 27A of the Kaunamano Homesteads;

33. $118^{\circ} 11'$ 2013.0 feet along Lots 27A, 24, and 20 of the Kaunamano Homesteads;

34. $121^{\circ} 22'$ 2266.0 feet along Lots 20 and 19 of the Kaunamano Homesteads;

35. $125^{\circ} 15'$ 5605.0 feet along Lot 16 of the Kaunamano Homesteads and the land of Kaunamano to the point of beginning, area 850 acres.

II.

That he does not know of any mortgage or other incumbrance affecting said land or that any other person has any estate or interest therein, legal or equitable, in possession, remainder, reversion or expectancy; but the attention of the court is respectfully called to the fact that on July 1, 1870, a partition deed was made between Lydia K. Dominis and her husband, John O. Dominis, L. M. Kapaakea, David Kalakaua and his wife Kapiolani, and Ruth Keelikolani, as Guardian of W. P. Kalahoolewa,

whereby it appears that Lydia K. Dominis, Likewise, who was also known under the name of L. M. Kapaakea, David Kalakaua and W. P. Kalahoolawa, were the children of C. Kapaakea and Annie Keohokalole, and as such were heirs at law of Annie Keohokalole, deceased, and entitled thereby to certain property in the Hawaiian Islands, among which was claimed the land of Kioloku. That under and by the said partition, the land of Kioloku was set aside to David Kalakaua, who on December 15, 1873, conveyed it to Obadiah B. Spencer; and that the Hutchinson Sugar Plantation Company, a corporation organized and existing under the laws of the State of California, now claims to be the owner of said [19] property by mesne conveyances from said Obadiah B. Spencer.

III.

That the said lands have never been awarded or patented or granted to any person or persons and are now and at all times heretofore have been "unassigned lands," of which the Territory of Hawaii has the legal power of disposing of the legal estate in fee simple.

IV.

That the said land is now occupied by the following named corporation: Hutchinson Sugar Plantation Company, a California corporation, whose attorney for service of process is E. Faxon Bishop, Honolulu, Territory of Hawaii.

V.

That the names in full and addresses so far as known to the undersigned of the occupants and

owners of land adjoining said land are as follows:

Anna Kailiawa, Homestead Lot No. 19, Kaunamano, Kau, Hawaii;

Eliza Gibson, Homestead Lot No. 20, Kaunamano, Kau, Hawaii;

E. K. Kauwe, Homestead Lot No. 24, Kaunamano, Kau, Hawaii;

Hutchinson Sugar Plantation Company, Naalehu, Kau, Hawaii.

VI.

That the Territory of Hawaii claims to own in fee simple the land within the limits of the Keala-kamano Road and the Kealaiki Road and all other roads which cross said land.

Dated at Honolulu this 1st day of August, 1913.

[20]

THE TERRITORY OF HAWAII,
By J. D. TUCKER,
Commissioner of Public Lands,
(Signed) By ARTHUR G. SMITH,
Deputy Attorney General.

Territory of Hawaii,
City and County of Honolulu—ss.

ARTHUR G. SMITH, being first duly sworn, deposes and says: That he is a duly appointed, qualified and acting Deputy Attorney General of the Territory of Hawaii; that he has read the foregoing Petition by him subscribed, knows the contents thereof and that the same is true to the best of his knowledge and belief.

(Signed) ARTHUR G. SMITH.

Subscribed and sworn to before me this first day
of August, 1913.

[Seal] (Signed) SAMUEL UPA,
Notary Public, First Judicial Circuit, Territory of
Hawaii.

[Endorsed]: In the Court of Land Registration,
Territory of Hawaii. Petition No. 283. In the
Matter of the Petition of the Territory of Hawaii
to Register and Confirm Its Title to the Ahupuaa
of Kioloku, in the District of Kau, Island and
County of Hawaii, Territory of Hawaii. Petition
for Registration. Filed August 2, 1913, at 9:10
o'clock A. M. (S) A. M. Harrison, Registrar.
Arthur G. Smith, Deputy Attorney General, Attor-
ney for the Territory. [21]

In the Court of Land Registration of the Territory
of Hawaii.

No. 283.

In the Matter of the Petition of the TERRITORY
OF HAWAII, to Register and Confirm Title
to Land.

**Answer and Claim of Hutchinson Sugar Plantation
Company.**

Comes now Hutchinson Sugar Plantation Com-
pany, a California corporation, and answering unto
the petition presented to the above-entitled Court
in the above-entitled cause by the Territory of
Hawaii, as petitioner, to register and confirm its

alleged title to the land described in said petition, say:

That the said petitioner has no title or right or interest in the land described in said petition or any part thereof;

That the said Hutchinson Sugar Plantation Company is seized and is the owner in fee simple of all of the land described in said petition.

WHEREFORE: Said Hutchinson Sugar Plantation Company prays that the prayer of the said petition be denied and the said petition be dismissed and that it may be adjudged to have its costs suffered herein.

Dated, Honolulu, T. H. December 5th, 1913.

[Seal] HUTCHINSON SUGAR PLANTATION COMPANY,
By HOLMES, STANLEY & OLSON,
Its Attorneys. [22]

Territory of Hawaii,

City and County of Honolulu.—ss.

E. F. BISHOP, being first duly sworn, deposes and says:

That he is the attorney in fact of Hutchinson Sugar Plantation Company, the corporation named in the foregoing answer and claim, and as such is authorized to make and makes this verification; that he has read the said answer and claim and knows the contents thereof and that the same are true to the best of his knowledge, information and belief.

(Signed) E. F. BISHOP.

Subscribed and sworn to before me this 6th day of December, 1913.

[Notarial Seal]

(Signed) CARL C. RHODES,
Notary Public First Judicial Circuit, Territory of Hawaii.

Received a copy of the foregoing this 6th day of December, 1913.

(S) ARTHUR G. SMITH,
Dep. Atty. Gen. Territory of Hawaii.

[Endorsed]: No. 283. In the Court of Land Registration of the Territory of Hawaii. In the Matter of the Petition of the Territory of Hawaii, to Register and Confirm Title to Land. Answer and Claim of Hutchinson Sugar Plantation Co. Filed Dec. 5th, 1913, at 10 A. M. J. Marcallino, Registrar. [23]

In the Land Court of the Territory of Hawaii.

PETITION No. 283.

In the Matter of the Petition of the TERRITORY OF HAWAII to Register and Confirm Its Title to the AHUPUAA OF KIOLOKU, in the District of Kau, Island and County of Hawaii, Territory of Hawaii.

Motion for Leave to Reopen Case for the Purpose of Offering Further Evidence in the Petition of the Territory.

Now comes the Territory of Hawaii, petitioner above named, by J. Lightfoot, Deputy Attorney

General, and moved this Honorable Court for an order herein allowing the introduction in evidence on behalf of the Territory by way of rebuttal, of a certified copy of portion of page 220, Volume 1-A, "Records of the Commissioner of Boundaries," the same being the petition of David Kalakaua for a certificate of boundaries of several lands including the land in question, said petition being in the Hawaiian language, a copy of which is as follows:

"I ka mea Hanohano Rufus A. Lyman,

Luna Palena Aina Oka,

Mokupuni o Hawaii.

Oka mea nona ka inoa malalo ke hoike nei
he mau aina ko A. KEOHOKALOLE 'Aole' i
loona na Award o ke kahi o kona mau aina
'mai na Luna Hoona mai' aka; ua mu no kona
noho kuleana ana maluna oia mau Ahupuaa a
hiki wale i keia wa; Nolaila ke nonoi ia aku nai
e hooponopono ia na [24] palena o ua mau
aina, e like me ko lakou mau inoa malolo panai:

| | | |
|----------------|---------|-----------|
| 1. Ahupuaa. | Kalana. | Mokupuni. |
| 1. Lililoa. | Puna. | Hawaii. |
| 2. Naluia. | Kau. | " |
| 3. Kamakamaka. | " | " |
| 4. Kapauku. 5. | " | " |
| 5. Mohokea. | " | " |
| 6. Kioloku. | " | " |
| 7. Ilikahi. | Kona. | " |

E kauoha ia no hoi ka Poe pili i keia mau aina
e hele ae i ku-la, i hoolala ia i e hana ia keia mau
aina imua oke Komokina aina.

Mea Noi.

(Sig.) D. KALAKAUA.

Honolulu, June 23d, 1873."

And a translation of which is as follows:

"To the Honorable Rufus A. Lyman,
Commissioner of Boundaries,
Island of Hawaii.

The Undersigned states, that A. KEO-HOKALOLE had dands. She did not receive awards from the Lands Commission to some of her lands; but she still holds said Ahupuaas to this time, Therefore, herewith apply to settle the boundaries of said lands, according to their names hereinunder, thus,

| Ahupuaas. | District. | Island. |
|----------------|-----------|---------|
| 1. Lililoa. | Puna. | Hawaii. |
| 2. Nalua. | Kau. | " |
| 3. Kamakamaka. | " | " |
| 4. Kapauku. 5. | " | " |
| 5. Mohokea. | " | " |
| 6. Kioloku. | " | " |
| 7. Ilikahi. | Kona. | " |

Property owners adjoining these lands be also called to appear on the day set for action on these lands, before the Land Commission,

Applicant,

Sgd. D. KALAKAUA,

Honolulu, June 23d, 1873." [25]

This motion is based on the record in said cause and on the affidavit of J. Lightfoot, hereto attached and made a part hereof, and to which reference is hereby made.

Dated, Honolulu, December 12th, A. D. 1918.

THE TERRITORY OF HAWAII,
(Signed) By J LIGHTFOOT,
Deputy Attorney General. [26]

In the Land Court of the Territory of Hawaii.

PETITION No. 283.

In the Matter of the Petition of the TERRITORY
OF HAWAII to Register and Confirm Its
Title to the AHUPUAA OF KIOLOKU, in
the District of Kau, Island and County of
Hawaii, Territory of Hawaii.

Notice of Motion.

To Hutchinson Sugar Plantation Company, and to
A. G. M. Robertson, Esquire, Its Attorney:

Please take notice that the foregoing motion will
be presented before the Honorable J. T. De Bolt,
Judge of the Land Court of the Territory of
Hawaii, at his courtroom in the Judiciary Building,
Honolulu, on the 14th day of December, 1918, at
the hour of nine o'clock in the forenoon of said
day, or as soon thereafter as counsel can be heard.

Dated, Honolulu, December 12th, A. D. 1918.

THE TERRITORY OF HAWAII,
(Signed) By J. LIGHTFOOT,
Deputy Attorney General.

Filed Dec. 12/18. A. V. Hogan, Registrar. [27]

In the Land Court of the Territory of Hawaii.

PETITION No. 283.

In the Matter of the Petition of the TERRITORY
OF HAWAII to Register and Confirm Its
Title to the AHUPUAA OF KILOKU, in
the District of Kau, Island and County of
Hawaii, Territory of Hawaii.

Affidavit of J. Lightfoot.

City and County of Honolulu,
Territory of Hawaii,—ss.

Now comes J. Lightfoot, and being first duly
sworn, on oath deposes and says:

That he is First Deputy Attorney General of the
Territory of Hawaii; that he presented the cause
of the petitioner in the Land Court before the Hon-
orable J. T. De Bolt on the 26th day of October,
1918; that on said day the attorney for the contest-
ant offered in evidence pages 98 and 399 of Volume
1-A, *Record of Boundary Commissions*, the same
referring to the evidence of witnesses and the de-
cision of the Boundary Commissioner in relation to
the boundaries of the Ahupuaa of Kioloku;

Filed Dec. 12/18. A. V. Hogan, Registrar. [28]

That through inadvertence and mistake, affiant
did not offer in evidence the position of the record
in the said matter contained on page 220, Volume
1-A of said record, the same being the petition of
David Kalakaua for a certificate of boundaries of
the land of Kioloku; that affiant believes said evi-

dence to be of importance in the case above and material to the issues joined therein.

Dated, Honolulu, December 12th, A. D. 1918.

(Signed) J. LIGHTFOOT,

Subscribed and sworn to before me this 12th day of December, A. D. 1918.

[Seal] (Signed) EVELYN M. SCOTT,
Notary Public, First Judicial Circuit, Territory of
Hawaii. [29]

In the Land Court of the Territory of Hawaii.

PETITION No. 283.

In the Matter of the Petition of the TERRITORY
OF HAWAII to Register and Confirm Its
Title to the AHUPUAA OF KIOLOKU, in
the District of Kau, Island and County of
Hawaii, Territory of Hawaii.

Stipulation as to Agreed Facts.

ROBERTSON & OLSON,
863 Kaahumanu Street, Honolulu,
Attorneys for HUTCHINSON SUGAR PLANTA-
TION COMPANY, Claimant.
Filed Dec. 28/18. A. V. Hogan, Registrar. [30]

In the Land Court of the Territory of Hawaii.

PETITION No. 283.

In the Matter of the Petition of the TERRITORY
OF HAWAII to Register and Confirm Its
Title to the AHUPUAA OF KIOLOKU, in
the District of Kau, Island and County of
Hawaii, Territory of Hawaii.

Stipulation as to Agreed Facts.

The following facts relating to the lands mentioned in the application of D. Kalakaua to the Boundary Commissioner of the Island of Hawaii, dated June 23d, 1873, other than the land of Kioloku, are for the purposes of this cause agreed upon by the parties hereto, and it is stipulated and agreed by said parties that said facts shall be considered by the Court in the determination of this cause with the same effect as though they had been testified to by witnesses:

(1) LILILOA, PUNA, HAWAII. This land is also called ILIILILILOA. No hearing was had or taken by the commissioner of boundaries with respect to this land upon the application of D. Kalakaua, or otherwise. In 1896, it was sold and conveyed by the Government to John T. Baker, by Grant No. 3954.

(2) NALUA, KAU, HAWAII, This is an ili within the Ahupuaa of Kaunamano. No hearing was had or action taken by the Commissioner of Boundaries with respect [31] to this land upon the application of D. Kalakaua, or otherwise. A

portion of it containing an area of 52.50 acres was sold and conveyed by the Government in 1856 to Keauwemaka by grant No. 2118. The remainder was homesteaded by the Government in 1913, and sold and conveyed to various parties by various grants.

(3) KAMAKAMAKA, KAU, HAWAII. No hearing was had or action taken by the commissioner of boundaries with respect to this land upon the application of D. Kalakaua, or otherwise. No land in the district of Kau is at the present time known by this name, nor is there any map or other record in the Government survey office by which it can be identified.

(4) KAPAUKEU 5, KAU, HAWAII. This land is now known by the name of Paukunui, and is an ili within the Ahupuaa of Kaunamano. No hearing was had or action taken by the commissioner of boundaries with respect to this land upon the application of D. Kalakaua, or otherwise. A portion of this land containing an area of 205.50 acres was sold and conveyed by the Government in 1859 to Kalakuniai by grant No. 2653. Other portions were homesteaded by the Government in 1913, and sold and conveyed to various parties by various grants.

(5) MOHAKEA, KAU, HAWAII. This land was also known as Mohokea. No hearing was had or action taken by the commissioner of boundaries with respect to this land on the application of D. Kalakaua. Its boundaries were settled and adjudicated by the commissioner of boundaries in two

parcels in and by Boundary Certificates Nos. 93 and [32] 94, issued on June 14th, 1876, to Princess Ruth Keelikolani, upon her application. This land, together with other lands claimed by the Princess formed the basis for a compromise with the Government whereby the trustees of the Estate of B. P. Bishop, successors in interest to Princess Ruth, relinquished all claim to certain lands designated as unassigned lands in consideration of the issuance of patents for three of them, which said compromise was ratified by the legislature of the Hawaiian Kingdom by chapter 78 of the Laws of 1890.

(6) ILIKAHİ, SOUTH KONA, HAWAII. No hearing was had or action taken by the commissioner of boundaries with respect to this land upon the application of D. Kalakaua or otherwise. The land was sold and conveyed by the Government in several parcels to various parties in 1852 and 1853 by grants numbered 866, 927, 1145, 1174 and 1175.

(7) That no Land Commission Award covering any of the said lands can be found in the records of the Land Comission or other public records.

Dated, Honolulu, December 27th, 1918.

TERRITORY OF HAWAII.

(Signed) By J. LIGHTFOOT,

Deputy Attorney General.

HUTCHINSON SUGAR PLANTATION
COMPANY.

(Signed) By ROBERTSON & OLSON,

Its Attorneys. [33]

Land Court, Territory of Hawaii.

PETITION No. 283.

In the Matter of the Petition of the TERRITORY
OF HAWAII.

Decision. Filed, January 29, 1919. (S.) A. V.
Hogan, Registrar, Land Court. [34]

Land Court, Territory of Hawaii.

PETITION No. 283.

In the Matter of the Petition of the TERRITORY
OF HAWAII.

Decision of Hon. John T. De Bolt.

On August 2, 1913, the Territory of Hawaii, the petitioner herein, filed its petition for the purpose of having that certain tract of land, containing an area of 850 acres, known as the Ahupuaa of Kioloku, District of Kau, Island of Hawaii, brought under the operation and provisions of the Land Registration Act (now chapter 178 of the Revised Laws of Hawaii, 1915), and to have its alleged title thereto registered and confirmed.

The petition recites, *inter alia*, that the land has never been awarded, patented or granted to any person or persons, and that the petitioner claims title thereto as an "unassigned" land, that is to say, a land which is not mentioned in the record of the Great Mahele of 1848, whereby all the lands of the Hawaiian Kingdom were intended, or sup-

posed, to have been assigned and set apart in severalty to and between the King, the Chiefs, and the Government, respectively. The contention of the petitioner being that all tracts of land not expressly listed as having been set apart to a chief, and subsequently awarded to him by an award of the Land Commission, which was exercising its functions under the Act of 1845, became the property of the Government. [35]

The Hutchinson Sugar Plantation Company, a California corporation, as claimant herein, filed its answer to the petition, wherein it says that the petitioner "has no title or right or interest in the land described in said petition or any part thereof"; that the claimant "is seized and is the owner in fee simple of all the land described in said petition."

The claimant asserts title under a Mahele and Land Commission Award which, under the circumstances disclosed by the evidence herein, must, as counsel for the claimant contends, be presumed to have been made to the High Chiefess Ane Keohokalole, but thereafter lost, and cannot now be found.

As to the evidence adduced at the hearing, there is but little, if any conflict. The chief contention of counsel on behalf of the respective parties being confined almost entirely to the necessary or proper conclusion to be drawn from the facts and circumstances disclosed by the evidence and admissions submitted for the consideration of the Court.

The evidence of the petitioner on its case in chief consisted of the testimony of S. M. Kanakanui, who has been thirty years in the service of the Bureau of

Government Survey. He testified to having searched the records of the Land Commission and the Privy Council of the former Hawaiian Kingdom without finding any record of or reference to the land of Kioloku. He found records of a Mahele and Land Commission Awards of other lands to Ane Keohokalole and her husband, the Chief, C. Kapaakea, but none of the land in question.

He also testified that the Ahupuaa of Kioloku was not mentioned in the Mahele records, and, later, the record of Keohokalole's Mahele being introduced in evidence, it confirmed his statement in this regard. He also testified to having made a [36] very careful search of the records of the Privy Council; but those records are of secondary importance, compared with those of the Land Commission, for it would be in the latter, and not in the former, that evidence of an award would naturally be found. The search made by the witness of the records of the Land Commission was not, as he said, "page by page," as in the case of the Privy Council records, and he admitted that in making the search he was working on Government titles in general, and not looking for Kioloku specially. There remains the possibility, therefore, that evidence of an award to Kioliku to Keohokalole actually exists in the records of the Land Commission.

The witness further testified that he searched for, without finding, a Royal Patent or Grant covering Kioloku.

The case for the claimant consists partly of facts

admitted by the petitioner and partly of evidence which is practically undisputed. The claim asserted by the claimant rests upon the long continued and uninterrupted possession of the land, accompanied by the usual acts of ownership of the claimant and its predecessors in title and occupancy, together with the assessment and payment of taxes thereon by the respective occupants, supplemented by the usual circumstances tending to show private ownership.

The evidence shows that on June 14, 1860, Kapaakea and Keohokalole conveyed all their real and personal property to C. R. Bishop as trustee for creditors with power and directions to collect the income and apply it to the payment of the debts of the grantors. Probate Record No. 1839, which covers the administration of the intestate estates of both Kapaakea and Keohokalole, shows that Mr. Bishop, as trustee, accounted to J. O. Dominis, administrator. The account shows the regular receipt for rent from one Martin for the land of Kioloku covering the years from [37] 1861 to 1868 inclusive.

In 1870 the administrator being discharged, a partition deed was made between the four children and heirs at law of Kapaakea and Keohokalole, whereby the several tracts of land which Keohokalole died seized and possessed of were divided between them, the Ahupuaa of Kioloku being among the lands set off to David Kalakaua (afterwards King of the Hawaiian Islands). The petitioner has admitted that from the date of the partition deed (1870) to the present time Kalakaua and his suc-

sors in interest (including the claimant) have held actual, open, continuous, uninterrupted and adverse possession of the land, using it for the purpose for which it is adapted, namely, for the cultivation of sugar cane and for pasturage. Such adverse possession having been maintained for a period of fifty-two years next prior to the filing of the petition herein, and inferentially for a period of fifty-eight years, extending back to about the year 1855, when the Land Commission could have made the award of the land to Keohokalole.

The petitioner has also admitted that the land has been assessed by the several Governments—the Monarchy, the Provisional Government, the Republic of Hawaii, and the Territory of Hawaii—to, and the taxes so assessed paid by the successive occupants since 1870 to the present time.

The record title, as shown by mesne conveyance from Kalakaua to the claimant, is regular and complete.

The evidence adduced also discloses a number of corroborating circumstances of more or less cogency tending to support the contention of the claimant. In this connection it is deemed pertinent to observe that as early as 1852 Kioloku seems to have been generally known as "Konohiki" land, that is to say, privately owned land. Tending to show this there are old maps and surveys, and a [38] description of a Kuleana within the boundaries of Kioloku, and surveys and descriptions of other lands adjoining this Ahupuaa, whereby Kioloku was referred to as "konohiki," and not as "unassigned" or "Govern-

ment" land, which as contradistinguished from "konohiki," would have been properly designated by the term ordinarily used with reference to such land, namely, "Aupuni."

It was held, In re Pa Pelekane, 21 Haw. 175, 186, that a reference in the description of one piece of land to another is evidence of the character of the latter.

It is proper, in this connection, to mention the fact that, on behalf of the petitioner, there is also in evidence some more recent maps and references to Kioloku, tending to show that it was unassigned, or Government, land. But, in my opinion, the weight of the evidence upon this phase of the case is strongly in favor of the claimant's contention.

The record of the Boundary Commissioner for the Third Judicial Circuit (R. A. Lyman) shows a proceeding, brought in 1873, under the statute for the settlement of the boundaries of lands which had been awarded by their ancient Hawaiian names, without surveyed descriptions. That proceeding was had upon the application of David Kalakaua, (who claimed title through the above-mentioned partition deed) for the settlement and adjudication of the boundaries of the Ahupuaa of Kioloku. The record shows that the owners of the adjoining lands had been notified of the proceedings as required by law. In response to the notice, as appears by the Commissioner's record, His Majesty King Lunalilo (owner of the adjoining Ahupuaa of Honuapo) represented by J. G. Hoapili, and the Government (owner of the adjoining Ahupuaa of Kaunamano)

represented by W. T. Martin, appeared. The hearing proceeded, testimony was taken and a judgment defining the boundaries of the land by a surveyed [39] description was entered (Boundaries Certificate No. 57). The respective owners of the adjoining lands of Honuapo and Kaunamano had a right to be heard lest their lands should be encroached upon by the judgment which would be entered defining the boundaries of Kioloku. No objection having been made by either of them to the hearing of the application of Kalakaua, it would seem that it amounted to an admission on the part of the King (Lunalilo), as the owner of Honuapo, and of the Government, as the owner of Kaunamano, that Kalakaua had the right to maintain the proceeding as the owner of Kioloku. This piece of evidence, as I view it, is important and of much probative force, for the reason that all the parties concerned, the Commissioner, the King, the Government's representative, as well as Kalakaua, were in a position to know the exact status of Kioloku and the precise nature of Kalakaua's title. Upon this precise question, *Re Boundaries of Paunau*, 24 Haw. 546, the court held that "A boundary commissioner is authorized to decide and certify boundaries upon the petition of an owner and his jurisdiction exists only in cases where the petitioner's ownership of the land claimed in his petition is not contested."

After the case at bar was closed, it was reopened on motion of counsel for the petitioner for the purpose of introducing in evidence a copy of the application made by Kalakaua to the commissioner of

Boundaries in 1873, which, being translated from Hawaiian into English, reads as follows: [40]

“To the Honorable Rufus A. Lyman,
Commissioner of Boundaries,
Island of Hawaii.

“The undersigned states, that A. Keohokalole had lands. She did not receive awards from the Land Commissioner to some of her lands; but she still holds said Ahupuaas to this time. Therefore, herewith apply to settle the boundaries of said lands, according to their names hereinunder, thus

| | Ahupuaas | District | Island |
|----|------------|----------|--------|
| 1. | Lililoa | Puna | Hawaii |
| 2. | Nalua | Kau | “ |
| 3. | Kamakamaka | “ | “ |
| 4. | Kapauku 5 | “ | “ |
| 5. | Mohokea | “ | “ |
| 6. | Kioloku | “ | “ |
| 7. | Ilikahi | Kona | “ |

“Property owners adjoining these lands be also called to appear on the day set for action on these lands, before the Land Commission,

“Applicant,
“(Sgd.) D. KALAKAUA.

“Honolulu, June 23d, 1873.”

Upon the foregoing copy of the application of Kalakaua to the Commissioner of Boundaries, being admitted in evidence, the following stipulation of facts was filed:

"STIPULATION AS TO AGREED FACTS.

"The following facts relating to the lands mentioned in the application of D. Kalakaua to the Boundary Commissioner of the Island of Hawaii, dated June 23d, 1873, other than the land of Kioloku, are for the purpose of this case agreed upon by the parties hereto, and it is stipulated and agreed by the said parties that said facts shall be considered by the Court in the determination of this cause with the same effect as though they had been testified by witnesses:

"(1) Lililoa, Puna, Hawaii. This land is also called Iliililoa. No hearing was had or taken by the Commissioner of Boundaries with respect to this land upon the application of D. Kalakaua, or otherwise. In 1896 it was sold and conveyed by the Government to John T. Baker, by Grant No. 3954.

"(2) Nalau, Kau, Hawaii. This is an ili within the Ahupuaa of Kaunamano. No hearing was had or action taken by the Commissioner of Boundaries with respect to this land upon the application of D. Kalakaua, or otherwise. A portion of it containing an [41] area of 52.50 acres was sold and conveyed by the Government in 1856 to Keauwe-maka by Grant No. 2118. The remainder was homesteaded by the Government in 1913, and sold and conveyed to various parties by various grants.

"(3) Kamakamaka, Kau, Hawaii. No hearing was had or action taken by the Commissioner of Boundaries with respect to this land upon the application of D. Kalakaua, or otherwise. No land in the district of Kau is at the present time known by this name, nor is there any map or other record in the Government survey office by which it can be identified.

"(4) Kapauku 5, Kau, Hawaii. This land is now known by the name of Paukunui, and is an ili within the Ahupuaa of Kaunamano. No hearing was had or action taken by the Commissioner of Boundaries with respect to this land upon the application of D. Kalakaua, or otherwise. A portion of this land containing an area of 205.50 acres was sold and conveyed by the Government in 1859 to Kalakuniai by Grant 2653. Other portions were homesteaded by the Government in 1913, and sold and conveyed to various parties by various grants.

"(5) Mohakea, Kau, Hawaii. This land was also known as Mohokea. No hearing was had or action taken by the Commissioner of Boundaries with respect to this land on the application of D. Kalakaua. Its boundaries were settled and adjudicated by the Commissioner of Boundaries in two parcels in and by Boundary Certificates Nos. 93 and 94, issued June 14th, 1876, to Princess Ruth Keelikolani upon her application. This land, together

with other lands claimed by the Princess formed the basis for a compromise with the Government, whereby the Trustees of the Estate of B. P. Bishop, successors in interest to Princess Ruth, relinquished all claim to certain lands designated as unassigned lands in consideration of the issuance of patents for three of them which said compromise was ratified by the legislature of the Hawaiian Kingdom by Chapter 78 of the Laws of 1890.

“(6) Ilikahi, South Kona, Hawaii. No hearing was had or action taken by the Commissioner of Boundaries with respect to this land upon the application of D. Kalakaua or otherwise. The land was sold by the Government in several parcels to various parties in 1852 and 1853 by Grants numbered 866, 927, 1145, 1174, and 1175.

“(7) That no Land Commission Award covering any of the said lands can be found in the records of the Land Commission or other public records.

“Dated Honolulu, December 27th, 1918.

“TERRITORY OF HAWAII,

By J. LIGHTFOOT,

Deputy Attorney General.

“HUTCHINSON SUGAR PLANTATION
COMPANY,

By ROBERTSON & OLSON,

Its Attorneys.” [42]

The application of Kalakaua to the Commissioner of Boundaries was to settle the boundaries

of seven Ahupuaas, including the Ahupuaa of Kioloku. The stipulated facts show a marked difference between the status and treatment of the six Ahupuaas other than Kioloku, and of Kioloku itself. This difference is significant, and imposes upon the Court the duty of endeavoring to find a reasonable solution of the questions thus presented.

The Ahupuaa of Kamakamaka cannot now be located or identified, thus showing how, in the lapse of time, former knowledge with reference to lands and titles in these islands has been lost or forgotten.

The Ahupuaa or Mohakea, evidently never belonged to Keohokalole, for its boundaries were afterwards settled by the Commissioner on the application of Princess Ruth Keelikolani.

The Ahupuaas, Lililoa, Naluia, Kapauku and Ilikahi were consistently regarded, treated and dealt with as Government lands. Of the seven tracts of land thus mentioned, only Kioloku was recognized as the property of Keohokalole, and under the partition deed of 1870, as Kalakaua's, and its boundaries were settled upon his application and with the knowledge or acquiescence of the Government.

The petitioner places great reliance upon the statement made by Kalakaua in his application of June 23, 1873, to the effect that no award had been issued to his mother, Ane Keohokalole. However, the conduct and all the acts of all the persons who have ever had anything to do with Kioloku (except

as to this one statement made by Kalakaua), including the various [43] Governments of these islands, throughout the entire history of Kioloku, down to the filing of the petition herein, were and are inconsistent with the alleged ownership of the petitioner, and consistent with the alleged ownership of the claimant. In this respect the petitioner, at most, can claim but one fact as against a long chain or other facts in evidence which supports the undisturbed and long continued possession of Keohokalole and her successors in interest, which, to my mind, strongly tend to show that Kioloku was privately owned. If Kalakaua was not the owner of Kioloku, why did the Boundary Commissioner, with the acquiescence of the Government, recognize him as the owner, and settle the boundaries of the land upon his application? Why was Kalakaua's application favorably acted upon only as to Kioloku, if, as a matter of fact, it belonged no more to him than did the other lands named in his application? There must be some reason or explanation for the distinction made between Kioloku and the other lands. There are, apparently, two theories, either of which is reasonable. One is, that Kalakaua was mistaken, and the surveyors and Government officials, who evidently believed that Keohokalole had acquired title, were right. This would satisfactorily account for the fact that Kalakaua was given a certificate of boundaries for the land, and the further fact that the land has ever since been regarded, treated and taxed as private property. The other theory upon

which a solution of the matter may be had is, that upon the filing by Kalakaua of his application an arrangement or settlement by way of compromise was entered into between him and the Government whereby his title to Kioloku would be recognized and confirmed in consideration [44] of his withdrawing or not pressing his application as to the other lands named, direct evidence of which arrangement or settlement cannot now be found.

Upon this phase of the case it would seem that the doctrine of presumptions, which permeates the remedial side of our system of jurisprudence, may appropriately be invoked. This doctrine applies to contracts, settlements, or compromises, as well as to the issuance of grants of lands and other muniments of title, when the circumstances involved (there being no direct evidence of the fact) affords a natural, reasonable and logical explanation of the state of facts shown in evidence and leading to a proper and just conclusion.

Best on Presumptions (Sec. 109) says:

“There is hardly a species of act or document, public or private, that will not be presumed in support of possession. Even Acts of Parliament may thus be presumed, as also will grants of the Crown.”

With reference to the authorities which discuss this question of presumptions in a general way and show the wide application of the doctrine in the determination of legal controversies, the following are cited:

1 Greenleaf, Evidence, Sec. 17, 32, 45;
1 Jones-Horwitz, Evidence, Secs. 11, 76, 76a,
77;

State vs. Wright, 41 N. J. L. 478;

Carter vs. Fishing Co., 77 Pa. 310;

Williams vs. Mitchell, 112 Mo. 300, 312, 314;

"A grant from the sovereign may be presumed from long continued peaceable possession of real property, accompanied by the usual acts of ownership, even as against the sovereign itself." 2 C. J. 290.

In harmony with the authority last cited the following cases are particularly in point: [45]

Grimes vs. Bastrop, 26 Tex. 310, 315;

Caruth vs. Gillespie, 68 So. 927, 929;

Carter vs. Walker, 65 So. 170;

State vs. Dickinson, 129 Mich. 221;

Central Coal & Coke Co. vs. Penny, 173 Fed.
340, 343, 346;

Tracy vs. R. Co., 39 Conn. 382, 393;

U. S. vs. Chaves, 159 U. S. 452, 464 (40 L.
Ed. 215, 220);

U. S. vs. Chavez, 175 U. S. 509, 518 (44 L.
Ed. 251, 251).

In the case of U. S. vs. Chaves, *supra*, at page 220 (L. Ed.), the Court said:

"Without going at any length into the subject, it may be safely said that by the weight of authority, as well as the preponderance of opinion, it is the general rule of American law that a grant will be presumed upon proof of

an adverse, exclusive and uninterrupted possession for twenty years, and that such rule will be applied as a *presumptio juris et de jure*, wherever, by possibility, a right may be acquired in any manner known to the law."

In the case of U. S. vs. Chavez, *supra*, at pages 258, 259 (L. Ed.), the Court said:

"The title asserted by appellees is deficient in the support of direct evidence. Is the deficiency supplied by the probative force of the possession of the land? Private ownership of the property with possession is claimed for over one hundred and thirty years before the cession of the territory to the United States. A continuous possession is shown from some time prior to 1716. Mexico respected that ownership and possession for the full period of its dominion over New Mexico, Spain respected them for over one hundred years, and at the time of the cession of the sovereignty over the territory to the United States no one questioned them. Succeeding to the powers and obligations of those governments, must the United States do so? This is insisted by their counsel, and yet they have felt and expressed the equities which arise from the circumstances of the case. Whence arise those equities? That which establishes them may establish title. Upon a long and uninterrupted possession, the law bases presumptions as sufficient for legal judgment, in the absence of rebutting circumstances, as formal instruments, or records, or

articulate testimony. Not that formal instruments or records are unnecessary, but it will be presumed that they once existed and have been lost. The inquiry then recurs, Do such presumptions arise in this case and do they solve its questions?" [46]

Under circumstances similar to those in the Chavez case, *supra*, the Kingdom of Hawaii respected the private ownership and possession of the land in question for a period of twenty-three years or more, the Provisional Government and the Republic of Hawaii respected such ownership and possession for a period of about seven years, and the Territory of Hawaii likewise respected such ownership and possession for a period of thirteen years. During this entire long period of years, under the several Governments mentioned, this private ownership and occupancy of Kioloku continued undisturbed and adverse to the whole world.

Upon the question as to whether there must be proof that the award or grant was actually made, the opinion of the Court in *Fletcher vs. Fuller* (120 U. S. 534, 30 L. Ed. 759), referred to in the Chavez case, *supra*, at page 259 (L. Ed.), is as follows, and makes it clear that such proof is not required:

" 'In such cases 'presumptions,' as said by Sir William Grant, 'do always proceed on a belief that the thing presumed has actually taken place. Grants are frequently presumed, as Lord Mansfield says (*Eldridge vs. Knott*, 1 Cowp. 215), merely for the purpose, and from

a principle of quieting possession. There is as much occasion for presuming conveyances of legal estates, as otherwise titles must forever remain imperfect, and in many respects unavailable, when from length of time it has become impossible to discover in whom the legal estate (if outstanding) is actually vested.' *Hillary vs. Waller, 12 Ves. Jr. 239, 252.*'

"And quoting Mr. Justice Story in *Richard vs. Williams, 7 Wheat. 59, 119 L. Ed. 398, 413,* "'a grant of land may as well be presumed, as a grant of a fishery, or a common, or of a way. Presumptions of this nature are adopted from the general infirmity of human nature, the difficulty of preserving muniments of title, and the public policy of supporting long and uninterrupted possessions. They are founded upon the consideration that the facts are such as could not, according to the ordinary course of human affairs, occur, unless there was a transmutation of title to, or an admission of an existing adverse title, in, the [47] party in possession. It is not necessary, therefore, in the cases mentioned, for the jury, in order to presume a conveyance, to believe that a conveyance was in point of fact executed. It is sufficient if the evidence leads to the conclusion that the conveyance might have been executed, and that its existence would be a solution of the difficulties arising from its non-execution.''"

“And, further, the Supreme Court of Tennessee, in Williams vs. Donel, 2 Head, 695, 697, ‘It is not indispensable, in order to lay a proper foundation for the legal presumption of a grant, to establish a probability of the fact that, in reality, a grant was ever issued. It will afford a sufficient ground for the presumption to show that, by legal possibility, a grant might have been issued. And this appearing, it may be assumed—in the absence of circumstances repelling such conclusion—that all that might lawfully have been done to perfect the legal title was in fact done, and in the form prescribed by law.’ ”

In U. S. vs. Pendell, 185 U. S. 189, 198 (46 L. Ed. 866, 871), the Court, speaking relative to the presumption of a grant, said:

“The evidence is sufficient not only to presume a grant, but to presume any other matter which would have occurred in order to render the grant a perfectly valid one, and the evidence of it is sufficient within the requirements of the treaty” of 1853 with Mexico.

As to payment of taxes. The payment of taxes on land is evidence of a claim of title by one in possession in cases between individuals.

O. R. & L. Co. vs. Kaili, 22 Haw. 673, 678; Holtzman vs. Douglas, 120 U. S. 278, 284 (42 L. Ed. 466, 468).

Such payment is also potent evidence against the Government which has levied and collected taxes

upon land, as it practically amounts to an admission of title in the party who has paid the taxes.

In the case of Busby vs. R. Co., 23 S. E. 50, 53, which was an action for damages against the railroad company, the plaintiff was required to prove title to his land, and relied upon evidence of adverse possession, but there was no evidence that the land [48] had ever been granted by the state. It was shown, however, that the plaintiff had paid taxes on the land during the period of fifteen years, covering the time of adverse possession. The Court said:

“Now, the fact that the plaintiff had been paying taxes on the land for a number of years * * * and the further fact that it did not appear that the state was setting up any claim to this land do afford evidence—whether sufficient or not it was for the jury to determine—that the state had parted with its title to the land for certainly we would not be justified in assuming that the state would collect taxes on its own land.”

In the case of Jover vs. Insular Government, 221 U. S. 623, 633, which originated in the Court of Land Registration in the Philippine Islands, and involved in a controversy between the petitioner and the Government over certain tide-lands, the petitioner claimed title under a grant made in 1859 by the Spanish Governor General. The respondent contended that the Governor General had no authority to make the grant. As in the case at bar, the title had not been disputed by the former

Government of the country, but on the contrary, as in the case at bar also, the Government had imposed taxes on the land as private property. With reference to that point the Court said:

“The Spanish authorities at Manila, although familiar with what was done and claimed under the grant, and although in a position to know and enforce the law applicable to it, did not call in question at any time during the thirty-nine years of Spanish dominion after it was made, but, on the contrary, treated it as valid by imposing taxes upon the land as private property. This is persuasive proof that in making the grant the Governor General did not exceed his authority.”

The fact that in the case the validity of the grant was disputed, and not its issuance, does not differentiate it from this so far as concerns the principle involved. The point of the matter is that by levying and collecting taxes on land [49] (except where it appears to have been done by mere inadvertence) the Government admits that the land does not belong to it, but that the title to the land has passed into private ownership.

Where taxes have been collected upon land for a long period of time by the former Government of the country it is no proper function of a new Government to attempt to disturb the possession and uproot the title of the party from whom taxes have been collected, and other facts and circumstances indicate strongly that title was obtained from the Government, merely because evidence of the original award

which might have been issued over sixty years before the title was questioned, cannot be found.

The petitioner contends that

"It is clearly proven that no grant was ever made of the land in question; that it therefore falls within the category of unassigned lands, and, under the authority of Thurston vs. Bishop, 7 Haw. 421, remains the property of the Government notwithstanding any claim of title by reason of long continuous occupation of the land by the plantation."

As I view the case of Thurston vs. Bishop, the only point it decided was that the statute of limitations does not run against the state. The claimant does not rest its case upon the statute of limitations, but upon the presumption of a grant.

There is a very clear distinction between the application of the doctrine of the statute of limitations and that of the presumption of a grant. The former does not operate against the sovereign, while the latter does. The presumption of a grant exists independently of the statute of limitations. [50]

"A grant from the sovereign may be presumed from the long-continued, peaceable possession of real property accompanied by the usual acts of ownership, in which case defective links in the chain of title will be supplied by presumption and the title declared perfect; and such presumption exists independently of the statute of limitations." Caruthers vs. Gillespie, 68 So. 928.

Carter vs. Walker, 65 So. 170, 171; U. S. vs. Chaves, 159 U. S. 453, 464 (40 L. Ed. 215, 220).

Counsel for the petitioner also cites the case of Kahoomana vs. Minister of the Interior, 3 Haw. 635, in support of his contention that "the presumption of a lost grant cannot in any event be entertained against the territory."

In that case there was no claim of a previous grant or of a lost grant. That question was not involved, the sole question being that of adverse possession. In the language of the Court therein (p. 636), "The plaintiff claims that her possession and that of her ancestors, thus traced (from 1829), was continuous, notorious and peaceable, and undisturbed until 1872, and therefore she had acquired a title to these premises as against the Government and as against third parties." Thus making it clear that the only title the plaintiff claimed was that by long possession, and that she "acquired a title by adverse possession," and not by grant. And, inasmuch as the statute of limitations does not run against the sovereign or Government, she, of course, had no valid claim or title. It is obvious that the court was not in that case dealing with the common-law presumption involved in the case at bar, but with the statute of limitations.

That the Court was dealing only with the question of the statute of limitations, as applied to adverse possession, is [51] obvious, as is further shown by the following language, found on page 640:

"The theory of titles by presumption is, that the holding possession of an estate openly and adversely for a certain length of time, creates an inference that there was a grant from the adverse claimant or his ancestors, and the statute of limitations forbids the adverse claimant from setting up against this long continued possession, the fact that there was no grant."

And when the Court in that case says, that 'as against the Government, a grant cannot be presumed or inferred from long possession,' it must be understood as meaning that the statute of limitations does not run against the Government; otherwise, the statement would be *obiter dictum*, for grants, ordinarily, will not be presumed upon possession alone.

"The party relying on his possession may, of course, call to his aid the statute of limitations where it is applicable, and if he relies upon the statute, the proofs must show compliance with its provisions. But the *statute of limitations does not supersede the common-law presumption*, and, if this is relied upon, possession for less than a period prescribed by the statute, may, with other cogent circumstances, sustain the claim of conveyance or of a lost grant. The length of time which brings a given case within the legal presumption of a grant or charter to validate a right long enjoyed is not definite, but depends on its peculiar circumstances. It may be necessary to seek the aid of this presumption in some cases where the *statute of limitations*

does not apply, as where it is urged against the state," 1 Jones-Horwitz, Evidence, Sec. 77.

Also, as further clearly pointing out the distinction between adverse possession and the common-law presumption of a grant, the following language, contained in the same section of the authority just mentioned, is quoted:

"It may be well here to point the distinction which suggests itself from a perusal of the cases. At first sight, there appears no clear reason why in the one case the claimant should rely on prescription and in the other on the statute of [52] limitations. There should be no confusion between them, and the sole cause of the confusion is the adoption of the period named in the statute of limitations as a guide merely for the court. When the claim is based on possession and the spectre of a title, the law usually materializes the spectre for the claimant, and may use the period named in the statute for guidance and comparison with that which the claimant exhibits; when the claim is based on adverse possession, which by its very terms excludes any shadowy base of claim (for it is on the physical opposition to all claims—the original seizure of the neglected right of some other person), then the statute of limitations is called into operation and the claims must proceed in the course therein laid out. Where mere adverse possession is to pass the title and bar a recovery, the statute of limitations has by express provision specified the length of time for which such possession must

continue, and if courts were to presume a grant solely upon the ground of adverse possession for a period less than the statute provides, and so bar a recovery by the true owner, the statute would be defeated."

In conclusion, after a careful consideration of all the evidence herein, and the law applicable thereto, I find that the Territory of Hawaii, the petitioner herein, has no right, title, or interest whatsoever in or to the Ahupuaa of Kioloku, the land in question, and, therefore, has no right to have the same registered.

The petition is dismissed. Decree accordingly.

(Signed) J. T. DE BOLT,
Judge of the Land Court.

Dated at Honolulu, T. H., January 29, 1919. [53]

Land Court, Territory of Hawaii.

PETITION No. 283.

In the Matter of the Petition of the TERRITORY
OF HAWAII.

Decree of the Land Court.

This cause having come on for hearing on October 22 1918, the Territory of Hawaii, the petitioner herein, appearing by J. Lightfoot, Deputy Attorney General, the Hutchinson Sugar Plantation Company, a California corporation, the claimant herein, appearing by Robertson & Olson, its Attorneys, and the court having heard the evidence in said cause and the arguments of counsel, and finding that the petitioner

has no right, title or interest whatsoever in or to the Ahupuaa of Kioloku, the land in question,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the petition be and the same hereby is dismissed.

Dated at Honolulu, Territory of Hawaii, this 4th day of February, 1919, at 3 o'clock and no minutes in the afternoon.

(Signed) J. T. DE BOLT,
Judge of the Land Court.

Filed: February 4th, 1919.

[Seal] (Signed) A. V. HOGAN,
Registrar of the Land Court. [54]

Land Court.

98

Tuesday, September 3, 1918.

Court opened at 2:00 o'clock P. M.

HON. W. S. EDINGS, Judge of the Land Court,
presiding; Registrar, Andrew V. Hogan; Re-
porter, H. R. Jordan.

PETITION No. 283.

In the Matter of the Petition of the TERRITORY
OF HAWAII.

**Minutes of Court—September 3, 1918—Motion to
Set.**

PRESENT: J. Lightfoot, Esq., attorney for peti-
tioner; W. T. Rawlins, Esq., attorney for Mr.
Kauai et al., respondents.

Mr. Lightfoot read motion on file and court set

the date for trial on September 23d, 1918, at 10 A. M.
(S) ANDREW V. HOGAN,
Registrar.

Land Court. 103

Monday, October 7, 1918.

Court convened at 2:00 o'clock P. M.

Hon. J. T. DE BOLT, Judge of the Land Court, presiding; Registrar, Andrew V. Hogan, Reporter, J. L. Horner.

PETITION No. 283.

In the Matter of the Petition of TERRITORY OF
OF HAWAII.

PRESENT: J. Lightfoot, Esq., Deputy Attorney General, attorney for petitioner; Robertson & Olson by A. G. M. Robertson, Esq., attorney for respondent, Hutchinson Plantation Company.

Mr. Robertson requests further time for answer of respondent, of about two weeks.

Mr. Lightfoot objects to delay and gives statement of progress of the case.

Court allows a continuance to 2 P. M. Monday, October 21, 1919. [55]

105

Monday, October 21, 1918.

Court convenes at 2 o'clock P. M.

Hon. J. T. DE BOLT, Judge of the Land Court, presiding; Registrar, Andrew V. Hogan; Reporter, J. L. Horner.

PETITION No. 283.

In the Matter of the Petition of the TERRITORY
OF HAWAII.

PRESENT: Deputy Attorney General J. Lightfoot,
for petitioner; Robertson & Olson by A. G. M.
Robertson, attorney for respondent, Hutchinson
Sugar Company.

On account of another Land Court trial being con-
tinued on this date, the above-entitled matter is con-
tinued to 2 o'clock P. M. October 22d, 1918.

106

Tuesday, October 22nd, 1918.

Court opened at 2 o'clock P. M.

Hon. J. T. DE BOLT, Judge of the Land Court, pre-
siding, Registrar, Andrew V. Hogan; Reporter,
J. L. Horner.

PETITION No. 283.

In the Matter of the Petition of the TERRITORY
OF HAWAII.

Minutes of Court—October 21, 1918—Trial.

PRESENT: Deputy Attorney General J. Light-
foot, attorney for petitioner; Robertson & Olson
by A. G. M. Robertson, attorney for respondent,
Hutchinson Sugar Company.

Mr. Lightfoot read petition to the Court;

It is stipulated and agreed between counsel that
ever since the date of the partition, which was in
1870, David Kalakaua, afterwards, King of the

Hawaiian Islands, and his successors, have been in open, exclusive, notorious, adverse possession of said property, in actual continuance, and in claim of right from that date to the present time.

It is stipulated and agreed between counsel that surveyed description of the land in question, which is claimed both by the Territory of Hawaii and by the Hutchinson Sugar Company, and it is practically the same description as given in the judgment or a certificate of a Boundary Commission, of the land of Kioloku, made in 1874. [56]

It is stipulated and agreed that the taxes on the land have been assessed against and paid by the respondent.

Called by Mr. Lightfoot.—S. M. Kanakanui sworn:

Respondent admits paragraphs 4 and 6 of petitioner's application for registration of title.

Petitioner rests.

Mr. Robertson addressed court, and furnished a certified copy of letter of January 9, 1888, from W. D. Alexander, surveyor, to the Minister of the Interior, which he read, offered in evidence, and it is admitted in evidence as Respondent's Exhibit

No. 1.

Land Court.

107

2 P. M. Oct. 22, 1918.

Called by Mr. Robertson.—Henry Peters sworn:

Land Commission Award No. 9659, Vol. 4, page 86, written in Hawaiian, translation of which is read in evidence in English by the witness, offered in evidence, and is so received as Respondent's Exhibit No. 2.

Said Vol. 4 is a Government record and is not marked in evidence. Certified copy of evidence and official translation thereof to be furnished court for file should the evidence as read in the record be unsatisfactory to the Court.

Grant No. 2656, Vol. 13 of Book of Grants, written in Hawaiian, is translated into English by witness and read into evidence as Respondent's Exhibit No. 3.

Grant No. 2748, Vol. 13, of Book of Grants, written in Hawaiian, is translated into English by witness and read in evidence as Respondent's Exhibit No. 4. [57]

Said Vol. 13 is a Government record and is not marked in evidence. Certified copies of evidence and official translation thereof to be furnished Court for file should evidence as read be unsatisfactory to the Court.

Boundary Commission Book, No. A-1, page 399, for the Island of Hawaii, written in English, is read in evidence by the attorney for the respondent, offered in evidence and so received as Respondent's Exhibit No. 5.

Said Boundary Commission Book is a Government record and is not marked in evidence.

It is stipulated by counsel that there is no reference on record of the ownership of the land of Kioloku.

Vol. 1, No. 3, page 98, Boundary Certificate No. 57, dated October 27, 1874, offered in evidence and received as Respondent's Exhibit No. 6. This evidence was not read, and certified copy is to be filed by the respondent in Court.

Vol. 1, No. 3, page 153, Boundary Certificate No. 74, Courses 1, 16, and 23 read from Hawaiian and translated into English by witness in evidence, offered and received as Respondent's Exhibit No. 7.

Vol. 1, No. 3, page 200, Boundary Commission Certificate No. 91, dated June 14, 1876: Courses 20, 21, 22, 23, 24, 33, 34 and 67 read from Hawaiian and translated into English in evidence by witness is offered and received as Respondent's Exhibit No. 8.

Said Vol. 1, No. 3 is a Government Record and is not marked in evidence.

At 4 o'clock P. M. the Court continued the matter to 2 o'clock P. M., October 23, 1918, and adjourned.

(S) ANDREW V. HOGAN,
Registrar. [58]

Land Court. 108

Wednesday, October 23d, 1918.

Court convened at 2 o'clock P. M.

Hon. J. T. DE BOLT, Judge of the Land Court, presiding; Registrar, Andrew V. Hogan; Reporter, J. L. Horner.

3:05 P. M., October 23, 1918.

PETITION No. 283.

In the Matter of the Petition of The TERRITORY
OF HAWAII.

Minutes of Court—October 23, 1918—Trial (Continued).

PRESENT: Deputy Attorney General J. Lightfoot, attorney for petitioner, Robertson & Olson by A. G. M. Robertson, attorney for respondent, the Hutchinson Sugar Plantation Company.

Called by Mr. Robertson—George F. Wright sworn:

Map of Kaunamano, Kioloku, etc., offered and received in evidence as Respondent's Exhibit No. 9.

Continued to 10 o'clock A. M. October 25, 1918.

(S) ANDREW V. HOGAN,
Registrar.

109

Minutes of Court—October 25, 1918—Trial (Continued).

Friday, October 25, 1918.

Court convened at 10:20 o'clock A. M.

Hon. J. T. DE BOLT, Judge of the Land Court, presiding; Registrar, Andrew V. Hogan; Reporter, J. L. Horner.

PETITION No. 283.

**In the Matter of the Petition of The TERRITORY
OF HAWAII.**

PRESENT: Deputy Attorney General J. Lightfoot, attorney for petitioner; Robertson & Olson by A. G. M. Robertson, attorney for respondent, the Hutchinson Sugar Company.

Called by Mr. Robertson—Alonzo Gartly sworn, Joseph Swift Emerson sworn, George F. Wright resumes stand.

11:50 A. M., the matter is continued to 2 o'clock P. M. October 25th, 1918.

PETITION No. 283.

In the Matter of the Petition of The TERRITORY
OF HAWAII.

2 o'clock P. M., October 25, 1918.

PRESENT: Court and parties as above.

Registered Map No. 575, dated 1879, entitled "A section of Kau," a record of the Territorial Survey Department, is offered in evidence by Mr. Robertson, and is received as Respondent's Exhibit No. 10.

This exhibit is a Government record and is not marked in evidence. [59]

"Deed of Trust" from A. Keohokalole and husband to Charles R. Bishop, dated June 14, 1860, registered in Book 13, pages 58-61, is offered in evidence and received as Respondent's Exhibit No. 11.

Called by Mr. Robertson—Robert Parker, Jr. sworn:

Supreme Court probate record No. 1839, produced by witness was partly read into the record by the attorney for the respondent, and admitted by the attorney for the petitioner.

Mr. Lightfoot extracted certain parts of said probate record and same were admitted by the counsel for the respondent.

Said probate record is offered in evidence and is received as Respondent's Exhibit No. 11.

Certified copy of "Partition Deed" made between J. O. Dominis et al., with Lydia K. Dominis, dated July 1, 1870, recorded in Book 30, pages 364 to 367, is offered in evidence and is received as Respondent's Exhibit 12.

Extracts of Exhibit 12 were read to the Court by the attorney for the respondent.

Attorney for respondent read parts of several deeds to show title to the respondent, which have been admitted by the attorney for the petition, as a matter of record.

At 3:30 P. M., the respondent rested. [60]

Called by Mr. Lightfoot—W. E. Wall sworn:

There is an argument between counsel as to the propriety of the survey Department altering or making lead pencil notations on Registered Map No. 575 (Respondent's Exhibit No. 11.) Court ruled that the map should be accepted with no reference to lead pencil notations.

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Oct. 25/18.

Land Court. Land Court Petition 283 (continued).

Registered Map No. 1409, of "Kau District," Hawaii, dated September 1, 1885, offered by petitioner and is received in evidence as Petitioner's Exhibit "A."

Registered Map 1455, of date, 1887, of part of the District of Hawaii, offered and received in evidence as Petitioner's Exhibit "B."

Registered Map 1807, Map of Kau, Hawaii, dated 1894, offered in evidence and received as Petitioner's Exhibit "C."

Continued to 9:00 A. M., October 26, 1918.

(Sgd.) ANDREW V. HOGAN,
Registrar. [61]

Saturday, October 26, 1918.

Court convened at 9 o'clock A. M.

Hon. J. T. De Bolt,

Hon. J. T. De Bolt, Judge of the Land Court, Presiding; Registrar, Andrew V. Hogan; Reporter, J. L. Horner.

PETITION No. 283.

In the Matter of the Petition of the TERRITORY
OF HAWAII.

**Minutes of Court—October 26, 1918—Trial
(Continued).**

PRESENT: Deputy Attorney General J. Lightfoot, Attorney for Petitioner; Robertson & Olson, by A. G. M. Robertson, Attorney for Respondent, the Hutchinson Sugar Company,

Court advised the parties that it is understood that the Governor of Hawaii declared this date (October 26th) a holiday. Both parties agreed to continue the trial this date and waive all claims against trial this date, both parties wished the trial to continue today.

Called by Mr. Lightfoot—W. E. Wall resumed stand:

Petitioner agreed to furnish Court with certified copies of Maps of Exhibits "A," "B" and "C" of the petitioner.

Argument relative to pencil memorandums on registered map 575 dated 1879 (Respondent's Exhibit 10) and Court ruled that certified copy of said map be placed on file in court.

Robert C. Leydecker sworn:

List of unassigned lands, occupied by private parties, without any title from the Government, with certificates dated October 22, 1918, of the Librarian of Public Archives (the witness) offered in evidence by the petitioner. Objected to by the respondent, and court ordered same marked for identification, and identified as Exhibit "D" of petitioner.

List of lands omitted in the Mahele of 1848, Island of Hawaii, District of Hilo. List contains 14 sheets of typewritten matter and is certified as a correct copy of the Archives records. Offered by petitioner and received as Petitioner's Exhibit "E." [62]

S. M. Kanakanui resumed stand:

Pages 9 and 10 of the Mahele Book of lands to kings and chiefs, dated January 24, 1848, offered by petitioner, and received in evidence as petitioner's Exhibit "F."

Certified copy of Exhibit "F" to be furnished by petitioner, as the Mahele Book is a Government Record, is it not marked in evidence.

Land Court.

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Land Court Petitioner 283 (continued).

Oct. 28/18.

11:10 A. M., All evidence in and parties rest.

11:15 A. M., Recess is declared to 1:00 P. M., this date.

Court convened at 12:50 P. M., Oct. 26/18.

Mr. Lightfoot argues, and concludes at 2:20 P. M.

Mr. Robertson replies and concludes at 4:40 P. M.

Mr. Lightfoot waives reply and suggests answering per brief.

Court allows petitioner 30 days to file brief, 30 days following for the respondent's brief, and 10 days for petitioner's reply.

At 4:45 P. M. the Court adjourned. There was no reporter at the afternoon session of the court.

(S) ANDREW V. HOGAN,
Registrar.

Land Court. 124

9 o'clock A. M., Saturday, December 14, 1918.

Hon. J. T. De Bolt, Judge of the Land Court, presiding, Registrar, Andrew C. Hogan, Reporter, O. P. Soares.

PETITION No. 283.

In the Matter of the Petition of the TERRITORY
OF HAWAII.

**Minutes of Court—December 14, 1918—Motion for
Admission of Newly Discovered Evidence.**

PRESENT: Deputy Attorney General J. Lightfoot, Attorney for Petitioner; Robertson & Olson by A. G. M. Robertson, Attorney for Respondent, Hutchinson Sugar Co.

Mr. Lightfoot reads petitioner's motion for admission of newly discovered evidence and asks permission to reopen the case. [63]

Mr. Robertson objects to reopening the case and admitting the evidence arguing that the digression of the court in this instance should be against the petitioner, the case having been closed, arguments finished, petitioner's first brief and the respondent's

brief in answer filed, and moves for a denial of the motion.

Court is of the opinion that it cannot disregard material evidence and the motion for admission of new evidence is granted.

Mr. Lightfoot is to file certified copies of the new evidence which is in Hawaiian, and the translation. On reading the translation of the new evidence, Mr. Robertson stated he had no objection to the translation Mr. Lightfoot is to present. Mr. Lightfoot is ordered to file same on December 16, 1918.

Trial is set for 9 o'clock A. M., Saturday, December 28, 1918. The matter of briefs will be set at a future time.

Land Court.

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9 o'clock A. M., Saturday, December 28, 1918.

Hon. J. T. De Bolt, Judge of the Land Court, presiding; Registrar, Andrew V. Hogan,; Reporter, O. P. Soares.

PETITION No. 283.

In the Matter of the Petition of the TERRITORY
OF HAWAII.

Minutes of Court—December 28, 1918—Stipulation as to Agreed Facts.

PRESENT: Robertson & Olson by A. G. M. Robertson, Attorney for Hutchinson Sugar Co., Respondent.

No appearance for the petitioner.

Mr. Robertson presents stipulation as to agreed facts and filed same. Court orders that the peti-

titioner file brief in 10 days from this date and the respondent within 10 days thereafter.

(S) ANDREW V. HOGAN,
Registrar.

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1:30 P. M. February 26, 1919.

Hon. J. T. De Bolt, Judge of the Land Court, presiding; Registrar, Andrew V. Hogan.

PETITION No. 283.

In the Matter of the Petition of the TERRITORY
OF HAWAII.

**Minutes of Court—February 26, 1919—Proposed
Issues for Jury Trial.**

PRESENT: Deputy Attorney General J. Lightfoot, Attorney for Petitioner; [64] Robertson & Olson by A. G. M. Robertson, Attorney for Hutchinson Sugar Plantation Company, Contestant.

Two issues are proposed by the Hutchinson Sugar Plantation Company and are filed in the record in the land court.

Mr. Lightfoot offers to amend issue No. 1 to read as follows:

“From all the evidence in this case, including the facts agreed upon, and all reasonable inferences to be drawn therefrom, does the jury find that the land of Kioloku was an “unassigned” land, title to which never passed from the king or the government by an award or grant.”

Mr. Lightfoot objects to the 2d issue proposed by Mr. Robertson, claiming that there is no need for it.

The Court is of the opinion that the 2d issue is a proper one.

Mr. Lightfoot will present an order, asking for the first issue, and states he does not want to be a party to the second issue.

Court will sign an order for the two issues. Mr. Lightfoot suggests that the petitioner submit one issue (#1) and the contestant issue No. 2.

Court suggests both parties request their issues and the court will incorporate them in form made by the court.

(S) ANDREW V. HOGAN,
Registrar.

Land Court.

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2 P. M., Wednesday, March 5, 1919.

Hon. J. T. De Bolt, Judge of the Land Court, presiding; Andrew V. Hogan, Registrar; G. D. Bell, Reporter.

PETITION No. 283.

In the Matter of the Petition of the TERRITORY
OF HAWAII.

**Minutes of Court—March 5, 1919—Issues for Jury
Trial.**

PRESENT: Deputy Attorney General J. Lightfoot, Attorney for Petitioner; Robertson & Olson, by A. G. M. Robertson, Attorney for Contestant, Hutchinson Sugar Plantation Co.

The matter before the court is the hearing of the

jury issues for consideration in the trial of the above-entitled matter [65] before the Circuit Court on the appeal from the decree of the land court.

There are two issues, which Mr. Lightfoot reads to the court. Mr. Lightfoot states that issue No. 1 is the issue proposed by the petitioner, and takes exception to the framing of issue No. 2, which was proposed by the contestant.

Mr. Robertson filed certain objections to proposed jury issues and asked for a hearing on his objections. The court suggests setting a date for hearing said objections.

Mr. Lightfoot asks for an extension of time in order to frame issues.

At 2:40 P. M. the Court hears counsel on contestant's objections to jury issues.

Mr. Robertson asks whether an appeal might better be taken to the Supreme Court instead of trial by jury, arguing that there was no question as to the facts in evidence. Mr. Lightfoot states there was a dispute in the land court trial as to the question of fact as to the meaning of the word "kono-hiki" land, and reiterates demand for jury trial.

Mr. Robertson states that the one issue presented by the petitioner makes the issue for the jury incomplete, and asks that his objections to the matter of jury issues be sustained, unless the petitioner files complete issues. Mr. Robertson further states that the contestant has no issues.

The court states that it has prepared two issues,

No. 1 of which was proposed by the petitioner and No. 2 offered by the contestant at an earlier date, that it incorporated these two issues and that it was ready to allow them. The court thereupon overruled the first objection of the contestant and sustained the second and third, there being three objections in all. [66]

Mr. Lightfoot states that it would be better if the court would issue a special order as to its overruling objection No. 1 and sustaining objections Nos. 2 and 3.

The court is of the opinion that Jury issue No. 1, with issue No. 2, is incomplete.

Mr. Robertson states that a Minute Order would be satisfactory to him instead of a special order as to ruling on objections of the contestant as to jury issues. Said special order is not made at this time.

The court signs the jury issues prepared by the court at 3 o'clock, P. M. this date.

There being no further matters before the court, an adjournment is taken.

Minute Order.

In the matter of the petition of the Territory of Hawaii, No. 283, the court orders that a minute order be made to the effect that the court on this date overruled objection No. 1 of counsel for the contestant and sustained objections Nos. 2 and 3, said objections being to proposed jury issues for the trial

of the above-entitled matter in the First Circuit Court by a jury.

(S) ANDREW V. HOGAN,
Registrar. [67]

TRANSCRIPT OF TESTIMONY.
LAND COURT PETITION NO. 283.

LAND OF KIOLOKU,
KAU, HAWAII.
TERRITORY OF HAWAII,
Petitioner. [68]

Territory of Hawaii, Land Court.

PETITION No. 283.

In the Matter of the Petition of the TERRITORY OF HAWAII to Register and Confirm Its Title to the AHUPUAA OF KIOLOKU, in the District of Kau, Island and County of Hawaii, Territory of Hawaii.

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Appearances, Joseph Lightfoot, Esq., on behalf of Petitioner,

A. G. M. Robertson, Esq., on behalf of Respondent or Contestant, Hutchinson Sugar Plantation Co.
[69—1]

Territory of Hawaii, Land Court.

PETITION No. 283.

In the Matter of the Petition of the TERRITORY
OF HAWAII to Register and confirm Its
Title to the AHUPUAA OF KIOLOKU, in
the District of Kau, Island and County of
Hawaii, Territory of Hawaii.

Oct. 22, 1918.

Mr. LIGHTFOOT.—Judge Robertson and myself have had some little dealings with a view to shortening the proceedings as much as possible in this court and have agreed to stipulate certain facts to obviate the necessity of offering evidence to prove the same. Your Honor, will notice that, in the first place, in paragraph two of the petition the Territory sets up what the claim of the Hutchinson Sugar Plantation Co. is, which is, briefly ————— (States) Now, to shorten up the proceedings it has been agreed that — the Territory stipulates and agrees that, ever since the date of the partition deed, which was in 1870, David Kalakaua afterwards King, and his successors, have been in open, exclusive, notorious adverse possession of said property under a claim of right—

Mr. ROBERTSON.—Actual and continuous.

Mr. LIGHTFOOT.—Actual and continuous and under a claim of right and from that day to the present time.

Now, also in the interests of saving time, counsel on the other side, I understand, is willing to stipulate and [70—2] agree that the description of the land in question which is attached to the petition is a proper survey and description of the land in controversy which is claimed both by the Territory and by the Hutchinson Sugar Plantation Co., and that it is practically the same description given in a judgment or a certificate of the boundary commissioner, Judge Lyman, of the land of Kioloku, made in 1874, I think?

Mr. ROBERTSON.—Yes.

Mr. LIGHTFOOT.—In 1874. If that admission can be made in open court, either in that form or in any form that counsel wishes to put it, it will save money.

Mr. ROBERTSON.—We make the admission as stated by counsel.

Mr. LIGHTFOOT.—Then, as it seems to us, may it please the Court, the only thing we have to do is to make a *prima facie* showing that this land is unassigned—

Mr. ROBERTSON.—Your admission—

Mr. LIGHTFOOT.—Oh, yes, there's a further admission that we wish to make, if the Court please, and that is that since the land went to Kalakaua, at all times since that; that is, in 1870 or thereabouts, the taxes have been paid by the successors in interest of Kalakaua, from that time to the present date.

Mr. ROBERTSON.—I would like to suggest a small amendment in phraseology there,—that the

taxes on the land in dispute have been assessed against and paid by the respective parties during their respective possessions, from that time up to date.

Mr. LIGHTFOOT.—That is more accurately stated and is admitted. I think that covers all. Mr. Kanakanui, take the stand, please. [71—3]

Testimony of S. M. Kanakanui, for Petitioner.

S. M. KANAKANUI, a witness called on behalf of petitioner, being first duly sworn, testified as follows:

Direct Examination.

By Mr. LIGHTFOOT.—Q. Your name please?

A. S. M. Kanakanui.

Q. What is your business? A. Surveyor.

Q. And where are you now employed, if anywhere?

A. In the land office; title searcher.

Q. Searcher of titles in the land office of the Territory of Hawaii? A. Yes, sir.

Q. How long were you thus employed?

A. A little over a year.

Q. A little over a year, and before that time what was your occupation? A. I was surveyor.

Q. And where were you employed?

A. Employed at the Government survey department.

Q. How long were you thus employed?

A. Oh, pretty near thirty years.

Q. Pretty near thirty years. Have you had occasion, during your professional employment, to in-

(Testimony of S. M. Kanakanui.)

vestigate the title of Kioloku? A. Yes, sir.

Q. Have you found any land commission award, any royal patent or any grant of the land of Kioloku to anyone?

A. In my search I failed to find the—any award or any land contained in the Mahele of 1848, neither in the award of the land commissioners, nor in the grants issued by the Government, nor in the—in any other disposition made by the Government, [72—4] of the land of Kioloku in Kau.

Q. And your search has been exhaustive on those matters? A. Yes, sir.

Mr. ROBERTSON.—I object to that question. It is not for this witness to say whether his search has been exhaustive.

Mr. LIGHTFOOT.—How extensive has been your examination of these records, Mr. Kanakanui?

A. Oh, as far as my time and ability serves.

Q. Has there been any record or book that you have not examined containing grants or award by the Government of land?

Mr. ROBERTSON.—I object to the question. I submit he may testify to what he has examined but not as to what he has not, because there may be something that he doesn't know about.

Mr. LIGHTFOOT.—Withdraw the question.

Q. Beginning with the Mahele book, have you examined the book of Maheles? A. I did.

Q. Is there in the Mahele book any division mentioning the land of Kioloku? A. There is not.

Q. Referring to Ceasar Kapaakea, the father of

(Testimony of S. M. Kanakanui.)

Kalakaua, is there any mahele of land in the Mahele book relating to his land? A. Yes, sir there are.

Q. In that Mehele book is there any mention, under the head of Ceasar Kapaakea, of the land of Kioloku? A. There is no mention.

Q. It is neither set apart to Kapaakea nor set apart for the King? A. Yes, sir, it is not.

[73—5]

The COURT.—Q. Not, you say? A. Not.

Q. Not set apart.

Mr. LIGHTFOOT.—Q. Referring now to the Mahele book, under the name of Annie Keohokalole, wife of Ceasar Kapaakea, is there, in the Mahele book, any mahele of the lands of Annie Keohokalole?

A. There is a mahele.

Q. There is a mahele?

A. Yes, lands of Keohokalole, but the Kioloku, land now under consideration, is not contained in that mahele.

Q. I see.

A. Either to Keohokalole herself or to Kamehameha Third.

Q. And no mention is made—

A. And no mention is made.

Q. —of Kioloku in that mahele? A. No.

Q. Referring now to the records of the Privy Council, have you examined those records with reference to the land of Kioloku?

A. I have examined them, yes, sir.

Q. And they are all now indexed, are they not?

A. Yes, sir.

(Testimony of S. M. Kanakanui.)

Q. In the archives. Have you examined the indexes? A. I did not.

Mr. ROBERTSON.—What is that answer?

The COURT.—Q. But you have examined the records, you say?

A. I have, the records in the Privy Council.

Mr. ROBERTSON.—Q. The index?

A. Not the index.

The COURT.—A. As I understand, you have examined the records [74—6] themselves?

A. Yes, sir.

Mr. LIGHTFOOT.—Q. Did you find in the records of the Privy Council any reference to the land of Kioloku?

A. I didn't find any mention of the land of Kioloku in the record. I have looked into the Privy Council.

Q. Have you examined the books of the land commission awards of the land commission?

A. I have.

Q. Do the indexes of those books—they are indexed, are they not? A. Yes, sir.

Q. Have you examined the indexes of the books?

A. Yes, sir.

Q. Is there in those books any award of the Ahupuaa of Kioloku?

A. Award of the Ahupuaa of Kioloku?

Q. Yes.

A. There is none. There is one on the books of the land commission.

Q. You seem to lay stress upon the word "Ahу-

(Testimony of S. M. Kanakanui.)

puaa" there. Is there any award of the land of Kioloku, irrespective of whether it is an ili aina or an ahupuaa or lele or any other award of Kioloku?

A. There are a few awards—There are a few small awards to natives.

Q. That is, Kuleanas within the—

A. Within the Ahupuaa of Kioloku.

Q. But no award of the whole land? A. Eh?

Q. But no award of the land as described in this petition?

A. No award—No award of the Ahupuaa itself.

[75—7]

Q. The only awards being of the kuleanas within the ahupuaa? A. Yes.

Q. And those awards that you have found in the land commission award books have not described the land claimed in the present petition?

A. Those small awards? They are within the bounds of the land of the petition.

Q. Coming down to the royal patents, have you examined the records of all royal patents granted?

A. I have.

Q. Have you found any records of any royal patent either to Kapaakea, to Annie Keohokalole or anyone else of the Ahupuaa of Kioloku?

A. In my examination of the patents to Kapaakea and Keohokalole I found that the land of Kiokoku did not—was not included in any of those patents.

Q. In any of the royal patents?

(Testimony of S. M. Kanakanui.)

A. And not in any other patent?

Q. And not in any other patent? A. Yes.

Q. Or patent grant, royal patent—

A. Or patent grant, yes.

Q. Or land grant?

A. Patent grant and land grant is the same.

Q. They are all the same thing. Sometimes they are called royal patent grants and sometimes land grants, but they are the same thing?

A. They are the same thing.

Q. Have you examined any other books of the Government; that is, other than those heretofore enumerated, showing grants of land by the Government to private individuals or corporations?

[76—8]

A. I have examined the record of the deeds, of the Government deeds to private parties and I found that the land of Kioloku was not included in any of those deeds.

Q. Is the land included under any definition of fort lands?

A. Oh, fort lands are only confined to lands in the—in the district of Honolulu.

Q. Is there any record in any grant in the records of school lands of Kioloku? A. School lands?

Q. Yes; it is not in the list of school lands?

A. Not in the list of school lands.

Q. Or of Crown lands? A. Or the what?

Q. Or the Crown lands?

A. Neither in the school lands nor in the Crown lands.

(Testimony of S. M. Kanakanui.)

Cross-examination.

By Mr. ROBERTSON.—Q. What did you say your present position is?

A. What's that?

Q. What did you say your present position is in the Government?

A. Oh, surveyor and title searcher.

Q. Surveyor and title searcher? A. Yes.

Q. You have had that position for about one year?

A. One year.

Q. Before that you were a surveyor in the employ of the Government? A. Yes, sir.

Q. You say you have examined the records of the Privy Council? [77—9] A. Yes.

Q. With reference to a search for the land of Kioloku? A. Yes, sir.

Q. How did you make that search?

A. What do you mean?

Q. Well, how did you search the books?

A. Why, I searched from volume to volume; from volume one to volume two, three, and four—

The COURT.—A. Turn leaf by leaf.

A. Yes, sir.

Q. Page by page?

A. It was some eight or nine years ago that I took the part of—of a title searcher for the Government, but not officially, to look into the questions of Government titles to lands, and in that capacity I had the opportunity of going over to the Privy Council—to rake out and read over the Privy Council records.

(Testimony of S. M. Kanakanui.)

Q. You went through all of them?

A. All of them, yes.

Mr. ROBERTSON.—Q. How many volumes did you search?

A. I think about nine or ten.

Q. Do you remember how many pages those volumes contained on an average?

A. Oh, some three, some four—four hundred pages.

Q. As high as eight hundred pages, some of them, don't they? A. Eh?

Q. Some of them as much as eight hundred pages?

A. I think so.

Q. Yes, Do you mean to say you read all those books through page by page? [78—10]

A. I read all those pertaining to lands.

Q. Well, those Privy Council records are chronologically arranged, are they, from day to day and from year to year as the meetings of the privy council were held? A. Yes.

Q. The land matters are not separated from other matters pertaining to the Government, are they? A. I know.

Q. What's that? A. Yes, sir.

Q. You mean no? Are the land matters separated from other matters?

A. No, they are all together.

Q. Not separated? A. Not separated.

Q. Well, when you say you read every page of the privy council records pertaining to land matters, what do you mean?

(Testimony of S. M. Kanakanui.)

A. I read those items in the privy council pertaining to lands; those items in the records of the privy council what concerning to land.

Q. I see. So you don't claim to have read every page in all those books of privy council records; you picked out that which you supposed referred to land, is that it?

A. Well, by reading page after page I come across an item where they refer to land and I take note of it.

Q. How long did it take you to do that?

A. Oh, for six or eight years, I think.

Q. Six or eight years? A. Yes.

Mr. ROBERTSON.—We have been allowed two weeks to make that search, your Honor. [79—11]

Q. And you are unable to find any reference in the privy council records to the Ahupuaa of Kioloku, is that it? A. Yes, sir.

Q. No reference of any kind?

A. Not that I know of.

Q. Well, it is still possible that you may have missed it, may you not, in looking through those books?

A. May or may not, but I am sure I didn't come across it.

Q. Some of the records of the privy council proceedings are in Hawaiian and some in English?

A. Yes, sir.

Q. Now, going to the records of the land commission, you refer to the land commission established by the Act of 1845, do you?

(Testimony of S. M. Kanakanui.)

A. Yes, sir.

Q. How many volumes of those records are there?

A. About ten.

Q. Ten volumes, and several hundred pages in each volume, are there not? A. Yes, sir.

Q. Do you claim that you read those volumes over page by page or how did you search the land commission records?

A. I never read every one of the pages but I read by title every one of them almost.

Q. Almost every one of what?

A. Of those awards, of those ten volumes.

Q. So you didn't go through page by page like you did the privy council records?

A. About nine years ago I went to the land commission books page by page, right through. [80—12]

Q. What were you looking for at that time?

A. Whether patent had been issued on the awards.

Q. Patent issued on the award of what?—of any land, you mean?

A. Any land contained in the land commission books.

Q. At the time that you made that search you were not searching for the land of Kioloku, were you? A. I was searching for all lands.

Q. Well, as I understand you, at the time you made that examination you were simply checking up as to whether royal patents had been issued on the various awards of the land commission?

(Testimony of S. M. Kanakanui.)

A. Yes, sir.

Q. There was no question about the title of Kioloku at that time, was there?

A. Oh, the question of the title of Kioloku went far back, I think further back than 1909.

Q. Well, let me ask you this: At the time that you made the search of the land commission records that you are now referring to you were not searching with reference to this particular land?

A. No.

Q. And the same is true in regard to the search of the Privy Council records, isn't it; you were making a general search there and not any special search, with reference to any lawsuit about Kioloku?

A. Well, I was searching for Kioloku as well as the other lands in the privy council.

Q. You were making a general search?

A. Yes, sir.

Q. Did you compile any statistics or anything from that search you made at that time? [81—13]

A. When I find—in my book those subjects that vitally interested the subject that I took I got it in my book.

Q. And none of those subjects related to Kioloku?

A. None, because I can't find any.

Q. Well, I will ask you this; when you say you couldn't find it, as a matter of fact you were not making a special search in regard to Kioloku at that time, were you?

A. Not especially to Kioloku; not confined only

(Testimony of S. M. Kanakanui.)
to Kioloku, but there are other lands which the Government involved—

Q. Were you making a general search with reference to Government lands? A. Yes, sir.

Q. Or Government claims to lands?

A. Government claims to lands.

Q. Yes. Do you remember how many awards altogether were made by the land commission?

A. Oh, pretty near eleven thousand awards.

Q. Something over eleven thousand? A. Yes.

Q. Do you know whether there is an award for each number or whether any numbers were skipped?

A. There's some one or two or three apanas in one award; some as high as fifty apanas in one award.

Q. I understand, one award may cover more than one piece of land? A. Yes.

Q. And in some cases as high as fifty separate pieces? A. Yes.

Q. What I mean is, are you prepared now to say, from whatever searches you have made of the land commission records, as to [82—14] Whether any numbers of any—any of the numbers between 1 and 11,000, say, are missing, and not there?

The COURT.—The award was made and not placed in the award book?

Mr. ROBERTSON.—No—

A. There are several awards by their numbers, index numbers.

Q. Yes.

A. Some of them are thrown out, some are not

(Testimony of S. M. Kanakanui.)

awarded, and some had been awarded.

Q. Exactly, so that if the highest number—if the number of the last award in the land commission records is 11,000, that doesn't mean that there were actually 11,000, awards made by the commission, does it? A. No, no.

Q. And the reason of that is that there are some numbers that are missing?

A. No, had never been awarded; some of the claims never been awarded.

Q. I understand that.

The COURT.—Q. Well, those that were not awarded could not be given a number, could they?

A. O yes, there was a number.

Q. Number just the same. A. Yes.

Mr. ROBERTSON.—Q. Well, as a matter of fact, are there not some numbers between 1 and 11,000 that are not represented even by unawarded claims?

A. Those claims might have been made to the board, and the board registered the number of those claims.

Q. Yes.

A. But the proof never came. [83—15]

Q. Yes.

A. And they never have been adjudicated and were thrown out.

Q. Exactly, that is one class, but, as a matter of fact, between the number of 1 and the number of 11,000, are there not some numbers that are not represented even by an unawarded claim?

(Testimony of S. M. Kanakanui.)

A. I don't catch you. You mean that the claim was filed, and the claim was missing?

Q. No, no, no, that there are some numbers between 1 and 11,000 of which there is nothing in the record to show that any claim, even an unawarded claim, was made; that is, that certain numbers between those, the first and the last, that are not represented by any record?

The COURT.—Q. That is, say here is No. 4 and here is No. 6, and you don't know a thing about No. 5; no record whatever about it, is that the idea?

A. I know this much; there are some numbers had been made and other numbers had been substituted to take that claim, the same claim, and the other one was ignored.

Mr. ROBERTSON.—Q. That is, claim number so and so may have been by a certain person for a certain piece of land, but the award of that number may have been to somebody else, of another piece of land? A. I have seen it.

Q. Exactly. A. I have seen it.

Q. But you don't get me, quite, yet. Aren't there some numbers between the number 1 and the number 11,000 of which there is nothing in the land commission records which relates to such number?

84—16] A. There might be, but I can't say.

Q. Can't say as to that? A. Can't say.

Q. In your search of the land commission records you never had that point in mind, did you?

A. I did not.

Mr. ROBERTSON.—I think that's all.

Mr. LIGHTFOOT.—That's all.

I think you will admit paragraph four, will you not, that the land is now in occupation? We allege in paragraph four that the lands are in the present occupation of the Hutchinson—

Mr. ROBERTSON.—What is it?

Mr. LIGHTFOOT.—That the lands are in the occupation of the Hutchinson Sugar Co., at the present time?

Mr. ROBERTSON.—Yes, certainly; in the occupation of the Hutchinson Sugar Co., claiming ownership.

Mr. LIGHTFOOT.—Will you admit the allegations of the sixth (reads) without proof?

The COURT.—The question is, will he admit?

Mr. LIGHTFOOT.—Yes, admit that. It is a matter of law.

Mr. ROBERTSON.—Well, it seems to me that what we would admit would be this, that if the land belongs to us, as we claim it does, the Government would have an easement for a public highway according to the roads mentioned.

Mr. LIGHTFOOT.—I think that would be sufficient to cover everything. Then we rest, if the Court please.

Mr. ROBERTSON.—Under the procedure laid down by the Supreme Court I am not at liberty to move for a nonsuit or dismissal without resting. Not being prepared to rest—unless the Court of its own motion, which it has the power to do, should

dismiss [85—17] the petition for lack of proof—I will proceed.

The COURT.—I don't think it is proper for the Court of its own motion to direct a nonsuit.

Mr. ROBERTSON.—Well, we will proceed, then, your Honor.

(Makes opening statement.)

I wish to offer this in evidence. That is a report of Professor Alexander to the Minister of the Interior.

Mr. LIGHTFOOT.—You offer this in evidence, Judge?

Mr. ROBERTSON.—Yes.

Mr. LIGHTFOOT.—We will note a formal objection to the introduction of the document on the ground that it is incompetent, irrelevant and immaterial. (Argument.)

The COURT.—Official, is it? Official record?

Mr. ROBERTSON.—Yes, your Honor, official report.

Mr. LIGHTFOOT.—Yes, a letter to the Minister of the Interior, a report to the Minister of the Interior.

Mr. ROBERTSON.—If your Honor please, it would be along the same lines as Mr. Kanakanui's—

Mr. LIGHTFOOT.—Yes, so we make the formal objection.

The COURT.—Well, we will admit it in evidence.

(Read.)

Mr. ROBERTSON.—There is a discrepancy in

the dates, but I have just told counsel it doesn't make any difference in this case whether the date was 1888 or 1889; that being the beginning of a new year, somebody evidently made a mistake.

(Exhibit 1 for contestant.) [86—18]

Testimony of Henry Peters, for Respondent.

HENRY PETERS, a witness called on behalf of contestant, being first duly sworn, testified as follows:

Direct Examination.

By Mr. ROBERTSON.—Q. Your name is Henry Peters? A. Yes, sir.

Q. What is your public position?

A. Clerk in the land office.

Q. Of the Territory of Hawaii? A. Yes, sir.

Q. Are the records of the land commission of 1845 kept in your office? A. Yes, sir.

Q. And are the records of the boundary commissioners—

Mr. LIGHTFOOT.—May I object to that, please? There is a mistake there. You have said the land commission of 1845. The land commission was not created until December the 10th, 1845, and didn't take office until February—was not appointed until February, 1846.

Mr. ROBERTSON.—Well, what I mean is the land commission under the act of 1845.

Q. I mean the land commission which was appointed to discharge its duties under the act of 1845.

A. Yes.

(Testimony of Henry Peters.)

Q. Those records are kept in your office, are they not? A. Yes, sir.

Q. State whether or not the records of the boundary commissioners of the several boundary commissioners of this Territory, are also kept in your office. A. Yes, sir. [87—19]

Mr. LIGHTFOOT.—I object to the question of the records of the boundary commissioners, they having no bearing on the issues of this case. The records of the boundary commissioners merely settled and certified the boundaries; didn't affect the titles at all. (Argument.) We make the formal objection that it would be immaterial, as not settling title; has nothing to do with the title.

The COURT.—Objection is overruled. I think it will throw some light.

Mr. ROBERTSON.—Simply a preliminary question.

Mr. LIGHTFOOT.—We make all these objections merely for the purpose of not letting our rights go.

Mr. ROBERTSON.—I haven't got to the point of offering them yet; simply preliminary.

Q. Have you brought with you, under subpoena, from the records of the land office, land commission award No. 9659? A. Yes, sir.

Q. Well, what volume is that award contained in?

A. Volume 4.

The COURT.—Now, it is possible, I may want to take this matter under advisement, and would like to have certified copies of these translations.

(Testimony of Henry Peters.)

Mr. ROBERTSON.—Yes. The land commissioner has been out of town for a week or so, and I have been unable to get certified copies.

The COURT.—I mean sometime during the hearing of the case.

Mr. ROBERTSON.—Yes. The reason I haven't got certified copies is because there is no officer here to certify them. I will offer these primarily and not ask the Court to keep the official records here, but to supplement or substitute [88—20] certified copies.

Q. Land Commission Award 9659, Volume 4, page what? A. Page 866—886.

Q. This volume and page shows Land Commission Award No. 9659 issued to whom?

A. To Kekahuna.

Q. Land situated where? A. Kioloku.

Q. District? A. No, Island of Hawaii.

Q. The record is in Hawaiian, is it?

A. Yes, sir; in Hawaiian.

Q. Will you read in English the record of that award? A. Number nine thousand—

Q. We have had that already.

A. This land of Kekahuna, at Kioloku, Kau—

Q. Then follows the description, does it not?

A. Yes.

Q. Read the description.

A. Commencing at the East corner and running
1. South 20 degrees West 6.50 chains along land
of the Konohiki. 2. North 60 degrees 45 West
12.55 chains along land of Konohiki. 3. North 30

(Testimony of Henry Peters.)

West 5.27 chains along land of Government.
4. South 68 15 East 14.21 chains along land of Aupuni to the point of beginning—to the point of commencement. Within this land $7\frac{1}{2}$ acres, Kau, Hawaii, April 8th, 1852.

Q. Yes. A. J. Fuller, Surveyor."

The COURT.—Now, I imagine the fact of certified copies—How about translations as well when it is in Hawaiian?

Mr. ROBERTSON.—Well, I was just wondering now, as this has been read into the record, whether a certified copy is necessary. [89—21]

The COURT.—It is not if I have the reporter make a copy.

Mr. ROBERTSON.—It might be advisable to file a certified copy in any event.

Q Then follows a diagram showing the shape of the land, does it not? A. Yes, sir.

The COURT.—In what way is that pertinent, Judge Robertson, to this question?

Mr. ROBERTSON.—I am going to show, your Honor, the location of this land with reference to the land in dispute, and I am going to call your Honor's attention to the diagram in the award, "Konohiki," "Konohiki," "Konohiki"; in other words, the diagram of the survey in the award shows this kuleana surrounded by Konohiki lands, for the reason that the— That is the ahupuaa now. (Showing.) Here's this award here to Kekahuna, and this diagram here shows that it is surrounded by Konohiki land and not Government land.

(Testimony of Henry Peters.)

(Argument.) I won't need to ask from time to time to withdraw the volume; the understanding is that the official records will be taken back by the witness and we will—if the reading of these documents into the record is not sufficient we will substitute certified copies.

The COURT.—Just make a note of the volume and page.

Mr. ROBERTSON.—And we offer that in evidence.

The COURT.—That will be received.

Mr. LIGHTFOOT.—We make the same objection.
(Contestant's Exhibit 2.)

Mr. ROBERTSON.—Q. State whether or not you have with you Grant No. 2656 of the records of your office? A. Yes, sir; I have it here.

Q. What volume is that contained in? [90—22]

A. Volume 13.

Q. On what page? A. No page.

Q. Oh, no page? A. Yes.

Q. Those records go by number of grant in consecutive order? A. Yes.

Q. That is a grant to whom? A. To Kaiahua.

Q. It is in the Hawaiian language, is it?

A. Yes, sir.

Q. What is the date of it?

A. Date, December 14, 1859.

Q. Will you read that in English, please, that grant? A. The whole thing or just description?

Q. Well, the whole thing.

A. No. 2656. Royal Patent. By this Royal Pat-

(Testimony of Henry Peters.)

ent makes known. Kamehameha the Fourth, by the grace of God King of the Hawaiian Islands, makes known to all men that he has, for himself and his heirs, given absolutely in fee simple to Kaiahua, his faithful and loyal subject, that certain piece of land situated at Pohina, Kau, on the Island of Hawaii—

Q. And then follows the description.

A. Then, "Bounded and Described as follows"—

Q. Read the description.

A. "Commencing at the North corner, on the seashore, and running along the boundary of Kioloku North 76 degrees third—

Q. 76 and a third degrees?

A. 76 and a third degrees, yes, West 4.20 chains, North 82 and $\frac{3}{4}$ West 6 chains. Thence along land of Kaleikau, South 29 and $\frac{3}{4}$ West 13.90 chains to a wiliwili tree marked 'R.' Thence along land of Kauwemaka, South 41 degrees West 27.95 chains along [91—23] that of the Government; South 27 $\frac{1}{4}$ degrees West 24.15 chains. Thence along the land of Kalakauiai South 40 $\frac{1}{2}$ degrees West 8.80 chains; thence along that of the Government, South 56 degrees East 23.10 chains; thence along land of Kalakunia North 82 degrees East 54 chains to the seashore. Thence along the seashore to the first point or the point of beginning. Containing 264 acres, reserving the right of native tenants—containing 264 acres more or less. This is the reason why this land given for—

Q. This is the reason for the conveyance.

(Testimony of Henry Peters.)

A. This is the reason for the conveyance, that he has paid in Royal Exchequer the money, one hundred dollars, but reserving to the Government all my mineral or metallic mines of every description, for Kaiahuna—

Q. "To," isn't it?

A. No, "for,"—"To Kaiahua"—

Q. "To Kaiahua"?

A. Yes. "This land is given for himself and his heirs—for himself in fee simple and to his heirs, his administrators forever, subject to the taxes levied by the legislature from time to time on all fee simple land. In witness whereof I have hereunto set my hand and caused the seal of the Hawaiian Islands to be affixed at Honolulu, this 14th day of December, 1859. L. Kamehameha. Witness Kaahunau."

Mr. ROBERTSON.—We offer that in evidence, if the Court please.

Mr. LIGHTFOOT.—We object to it, if the Court please. It doesn't seem to us to have any bearing on the issue.

The COURT.—It is admitted in evidence.

(Contestant's Exhibit 3.)

Mr. ROBERTSON.—Q. Have you brought with you, under subpoena, [92—24] from the records of your office Grant No. 2747?

A. 2747 or—?

Q. 2747. A. Yes. No—2747? 2749.

Q. 2747, Kaleikau.

A. Oh, this is 2747.

(Testimony of Henry Peters.)

Q. 2748 it ought to be. A. No.

Q. Eh?

A. No. 2748? No—I think 2748, I think.

Q. 2748 shows a land in Puna?

A. No, that is the name of the land, Kau; this is the name of the land.

(Question read by reporter as follows: "Q. Have you brought with you, under subpoena, from the records of your office Grant No. 2747.")

Mr. ROBERTSON.—Change that to 2748.

Q. What is your answer? A. Yes, sir.

Q. In what volume does that appear? A. 13.

Q. Volume 13. Please read it.

A. "No. 2748. Royal Patent. By this Royal Patent makes known Kamehameha 4th, King—by the grace of God, King of the Hawaiian Islands, to all men that he has this day and for his successors have given absolutely in fee simple to Kaleiku"—

Q. Kaleiku?

Q. —"his faithful and loyal subject, all that land situated at Pohina, Kau, on the Island of Hawaii, bounded and described as follows: Commencing at the West corner of this at the pile of stone along the land of Kauwemaka, West 84 $\frac{1}{4}$ East 21.80 chains to a wiliwili tree marked 'R.' Thence along Government [93—25] North 29 $\frac{3}{4}$ East 13.90 chains to a stone wall on the boundary of Kioloku. This land—No, boundary of Kulaku; thence along said land North 79 $\frac{1}{4}$ West 21.28 chains, South 28 West 14.97 chains to the point of beginning. Contain-

(Testimony of Henry Peters.)

ing 29.8 acres, reserving the right of native tenants. Containing—

Q. And the rest of that patent is in the same form as the previous one you have just read, is it?

A. Yes, sir.

Q. Signed by the same parties? A. Yes, sir.

Q. And dated?

A. Dated first day of May, 1861.

Mr. ROBERTSON.—We offer that in evidence, your Honor.

The COURT.—It may be received in evidence.

(Contestant's Exhibit 4.)

Mr. ROBERTSON.—Q. State whether you brought with you, under subpoena, the record of the boundary commissioner for the Island of Hawaii? A. Yes, sir.

Q. Volume A, No. 1? A. Yes, sir.

Q. Will you please refer to page 399 of that volume? A. Yes, sir, I have it.

Q. State whether or not on that page there is any record with reference to a proceeding to settle the boundaries of the Ahupuaa of Kioloku in the District of Kau? A. Yes, sir, there is.

Q. Written in the English language, is it not?

A. Yes, sir.

Mr. ROBERTSON.—We offer this in evidence.
[94—26]

Mr. LIGHTFOOT.—We submit that, for the reason formerly urged, it is immaterial to this case what the boundaries of Kioloku are. They are admitted to be correctly described in the petition and,

therefore, any evidence of that would be cumulative. The boundary commissioners were not entitled—not authorized to settle title.

The COURT.—The Government was a party to these proceedings?

Mr. ROBERTSON.—We propose to show that the Government was represented at the proceeding, yes, your Honor.

The COURT.—I think it is pertinent.

Mr. LIGHTFOOT.—I wish to state that the Government was not a party. The Government was not a party to these proceedings. It is true there was a Government—the record shows there was a Government representative of some kind present at the hearing before Judge Lyman, who was commissioner, but the Government was not represented.

(Argument.)

The COURT.—I will admit the document. I want everything before me that can possibly have any bearing upon the matter.

Mr. ROBERTSON.—Have you any objection to my reading this?

Mr. LIGHTFOOT.—No.

Mr. ROBERTSON.—Reads as follows: —at the head of the page, “The Ahupuaa of Kioloku, District of Kau, Island of Hawaii, Third J. C.”—which we claim means Judicial Circuit—“On this, the 14th day of October, A. D. 1873, the Commission of Boundaries for the Island of Hawaii, Third J. C., met at Waiohinu, Kau, on the application of

D. Kalakaua for the hearing of testimony for the boundaries of Kioloku, situated in the District of Kau in said Island of Hawaii"—

The COURT.—Why, that was to fix the boundaries of the land in [95—27] question, then?

Mr. ROBERTSON.—Yes, your Honor. You see I am not reading now— This proceeding here was in October, 1873; this was subsequent to the partition deed of the heirs of Keohokalole whereby Kalakaua was assigned, in the partition between the family, to this land of Kioloku. He then, in 1873, brought this proceeding for the settlement of the boundaries. It was a land that was awarded, like so many others, were by name, and that is what the boundary commissioners were established by law for, was to settle the boundaries of lands that had been awarded by name only, and in that proceeding, according to the regular procedure, notice of the proceeding was given to adjoining owners and they were entitled to be heard, not on the question of the title but upon the boundaries of the land. Now, then, we will show that the boundaries on the west side, the boundary—the land on the west side of Kioloku was a Government land, hence the Government was directly interested in the settlement of the boundaries of Kioloku because it was an adjoining land, and that fully accounts for the Government being represented at the proceeding.

(Continues reading:) "Due notice personally served on owners or agents of adjoining lands as

far as known. Present J. G. Hoapili for the applicant and his Majesty, W. T. Martin for the Hawaiian Government"—Then follows the testimony of witnesses, which I will not take time to read, unless counsel wants it. There was a continuance until the 15th, continuance on account of the illness of a witness, until the 15th of October, 1873, and then the—I will read again: "Boundary commission met at Poohina on October 15th, at the house of the witness Pae, according to adjournment from the 14th inst. Present J. G. Hoapili and J. Kauhane." At the end of the testimony there is this entry: [96—28] *this entry*: "Testimony closed. Decision, boundaries to be as given in evidence of the witnesses of this land and Honuapo, and Royal Patents of adjoining lands. Survey ordered. Notes of survey to be filed previous to certificate of boundaries being issued. R. A. Lyman, Commissioner of Boundaries, Third J. C."

We offer that in evidence.

Mr. LIGHTFOOT.—Wouldn't it be well to stipulate that in the evidence there is no record of any testimony being given as to the ownership of the title of Kioloku? It is ambiguous as it is there.

Mr. ROBERTSON.—I will admit that. That proceeding is not a trial of title; it is a settlement of boundaries. I will admit that no reference was made, with this qualification, Mr. Lightfoot, that Kalakaua was claiming—

Mr. LIGHTFOOT.—Yes, yes.

(Testimony of Henry Peters.)

Mr. ROBERTSON.—With that understanding, that the proceeding was instituted by Kalakaua, claiming to be the owner, there is no other reference to the title of the land, the title not being at issue in that proceeding.

The COURT.—Do I understand the decision of the land commissioner fixed the boundaries of the land in question as they are now claimed to be?

Mr. ROBERTSON.—And ordered a survey.

(Contestant's Exhibit 5.)

Q. State whether or not you have brought with you, under subpoena, from the records of your office, record of the boundary commissioner of the Island of Hawaii, Volume 1 number 3?

A. Yes, sir.

Q. Will you please turn to page 98 of that volume. State whether or not there is recorded there Boundary Certificate No. 57 [97—29] of the boundaries of Kioloku issued by R. A. Lyman, Commissioner of Boundaries, Third Judicial Circuit, under date of October 29th, 1874?

A. Yes, sir, they are.

Mr. ROBERTSON.—I have no interest in reading all this into the record, Mr. Lightfoot. If you will let me withdraw the exhibit and I will file a certified copy—

Mr. LIGHTFOOT.—Can't we even save that expense, Judge, by admitting that the survey there is, for all practical purposes the survey in the petition?

Mr. ROBERTSON.—Yes, I am willing to admit

(Testimony of Henry Peters.)

that, that the survey description in this certificate shows the—or gives a description of the—a survey description of the Ahupuaa of Kioloku which is substantially the same as the description of this land contained in the petition in this case.

Mr. LIGHTFOOT.—That will save time.

The COURT.—Yes, that being the only purpose for which it was offered anyway.

Mr. ROBERTSON.—That's all it is for.

(Contestant's Exhibit 6.)

Q. State whether or not there is contained in that same volume boundary certificate issued by the same commissioner on the Ahupuaa of Honuapo, being No. 74?

A. Yes, sir; 27th day of April, A. D. 1875.

Q. Issued by R. A. Lyman, Commissioner of Boundaries, Third Judicial Circuit, is that right?

A. Yes, sir.

Q. Now, the record shows that the certificate was issued on the application of C. R. Bishop?

A. Yes, sir.

Mr. ROBERTSON.—Unless we can shorten this it will take a lot [98—30] of material to get at the point I want to bring out.

Mr. LIGHTFOOT.—Well, there is only one boundary you want there, isn't there?

Mr. ROBERTSON.—I simply want to lay the foundation for subsequent testimony of a surveyor.

Q. Will you please read here, in the description of the boundaries of Honuapo, the first course?

The COURT.—Is that adjoining or near—

(Testimony of Henry Peters.)

Mr. ROBERTSON.—That is adjoining the land in question? A. North 74 degrees—

Mr. LIGHTFOOT.—Where does it take its departure?

Mr. ROBERTSON.—Q. Commence at—just above that, how does it read from your record here?

A. “Commencing at the seashore at the end of points near place called Hanakaulua and running 1—

Q. And the first course?

A. “North 74 degrees West 25 chains along portion of Hionaa sold to Kelii, Patent No. 826 and Aupuni.”

Q. Now read the 16th course from the same description.

A. 16. South 40 and $\frac{1}{4}$ degrees East 34.70 chains along Kioloku to X cut in the bed-rock of stream at Kamaili.”

Q. Read the 23d course.

A. “23d. South 70 and a half degrees East 45.57 chains along Kioloku to pile of stones.”

Mr. ROBERTSON.—That's all I want to ask this witness on that. We offer that part of that record in evidence.

The COURT.—It may be received in evidence.
(Exhibit 7.)

Mr. ROBERTSON.—Q. What was the date of that? A. 27th day of April, 1875.

Q. In that same volume you have in your hand there please [99—31] turn to page 200, Cer-

(Testimony of Henry Peters.)

Certificate of Boundaries No. 91. Page 200. What do you find there?

A. I find a certificate of boundaries of Waiohinu, District of Kau, Island of Hawaii, Third Judicial Circuit.

Q. Certificate No. what? A. 91.

Q. Issued by R. A. Lyman, Commissioner of Boundaries? A. Yes, sir.

Q. Under what date?

A. The 14th day of June, A. D. 1876.

Mr. ROBERTSON.—This is a good deal like the other, Mr. Lightfoot.

Mr. LIGHTFOOT.—Well, let's save as much as we can.

Mr. ROBERTSON.—Q. All right, will you read the—from the certificate of boundaries of Waiohinu will you read the 20th course?

A. "20. North 30 degrees West 12.60 chains along Government portion of Kiolakaa to a pile of stones."

Q. And the 21st course?

A. "21st. North 39 and 3/4 degrees West 17.50 chains along Government land to pile of stone."

Q. And the 22d course?

A. "22d. North 40 and a half degrees, West 33.08 chains along same."

Q. "23d course?

A. "23. North 34 degrees West 16.17 chains along same just below scattering woods."

Mr. LIGHTFOOT.—You have the 21st course. What comes after that?

(Testimony of Henry Peters.)

A. 22d.

Q. And then the 23d?

A. And then the 23d? [100—32]

Mr. ROBERTSON.—Q. Now the 24th course, please?

A. “24th. North 28 degrees 43 minutes West 121.25 chains along Government land to Kalahupala in scattering woods.”

Q. Read the 33d course, please.

A. “33d. South 24 degrees ten minutes East 495 chains along Kaalaiki Government land to Hapuumanu, a high prominence at the lower edge of the thick ohia forest, thence”—

Q. Read the 34th course?

A. “34. South 26 degrees East 30 chains.”

Mr. LIGHTFOOT.—Do you offer to connect it all, Judge?

Mr. ROBERTSON.—By the evidence of a surveyor, yes. I can only put on one witness at a time.

A. (Continuing.) —“along Kaunamano Government land to a point from which the west corner of Kioloku land the Letter “A” cut in bedrock at the junction of two streams bears north 40 degrees East 11 chains, thence”—

Q. And read the 67th course, please?

A. “67. South 12 degrees East 32.65 chains to a pile of stone at the top of the pali; thence along Kahaea Government land”—

Q. That’s all I have to that.

Mr. ROBERTSON.—We offer that in evidence.

The COURT.—It is now four o'clock, the usual time for adjourning.

Mr. ROBERTSON.—All right, your Honor. That is admitted, is it?

(Respondent's Exhibit No. 8.)

Hereupon the further hearing in this matter is continued until two o'clock tomorrow afternoon,
[101—33]

Territory of Hawaii, Land Court.

PETITION No. 283.

In the Matter of the Petition of the TERRITORY
OF HAWAII.

Oct. 23, 1918.

Mr. ROBERTSON.—At this time, if the Court please, I would like to give notice to the Territory to produce from the archives of the Government survey office a map of a part of District of Kau, including the land of Kioloku, made by—a survey made by Mr. F. S. Lyman in 1879.

Mr. LIGHTFOOT.—Wouldn't the correct procedure in that case be to subpoena the surveyor of the Territory to bring the map in? Why should we be burdened with producing this thing?

The COURT.—I suppose the motion is made on the theory that it is in your possession.

Mr. ROBERTSON.—Why, certainly.

(Argument.)

I am practically driven to this course from the fact that I can't get a certified copy made over there; made application for it and just been in-

formed that I can't get it. There is no recourse but to have the original produced, and I haven't time now to go out of court and issue a subpoena so I am giving this notice to the opposite party to produce a document in his possession.

Mr. Wright, will you take the stand, please?
[102—34]

Testimony of George F. Wright, for Respondent.

GEORGE F. WRIGHT, a witness called on behalf of contestant or respondent, being first duly sworn, testified as follows:

Direct Examination.

By Mr. ROBERTSON.—Q. What is your name?

A. George F. Wright.

Q. What is your profession? A. Surveyor.

Q. How old are you? A. Thirty-six.

Q. How many years' experience have you had as a surveyor?

A. I started in 1898, about 20 years ago.

Q. Twenty years here in this Territory?

A. In the Islands.

Q. Where you born here? A. Yes.

Q. In the course of your experience in the surveying of lands in this Territory have you had occasion to familiarize yourself with the methods pursued in the original Government records with reference to describing granted or awarded lands?

A. That is, you mean—?

Q. That is, are you familiar with the Government records of awards and grants of land in this Territory? A. I am.

(Testimony of George F. Wright.)

Q. And are you familiar with the Hawaiian words and phrases used in the Government records with reference to various classes of land?

A. Yes; most of them; great many of them.

Q. State whether or not you have ever surveyed the land of Kioloku in the District of Kau, Hawaii?

[103—35]

Q. As well as adjoining lands? A. I have.

Q. At my request, for the purposes of use in this hearing, have you prepared a plan showing the land of Kioloku and the adjoining lands? A. I have.

Q. I will ask you if this is the plan that you have just referred to? A. It is.

Mr. ROBERTSON.—We offer this in evidence.

Mr. LIGHTFOOT.—I have no objection, if the Court please.

The COURT.—It may be received in evidence.

(Exhibit 9.)

Mr. ROBERTSON.—Q. What is the scale, Mr. Wright?

A. 200 feet to an inch. 200 feet—I will just check myself on that (Steps down to map.) No, 500 feet: 500 feet to an inch.

(Map fastened to hat-rack.)

The COURT.—Q. That is correct,—the bottom if north there? A. Yes.

Mr. ROBERTSON.—Q. The land of Kioloku is a long, narrow strip in general shape, is it not?

A. It is.

Q. Running from the sea up to the side of the mountain? A. It is.

(Testimony of George F. Wright.)

Q. And what is the general direction of the length of the land?

A. It is east and west. This is west and runs towards the east. (Showing.)

Q. Long, narrow strip of land running east and west, on the south side of Kioloku, what is the adjoining land, that is, the large [104—36] land?

A. Kaunamano.

Q. Can you state whether or not that was an awarded land or whether it is Government land?

A. Government land.

Q. On the north side of Kioloku, what is the adjoining—or what are the adjoining lands?

A. Honuapo, L. C. A. 8559B, Apana 13, to W. C. Lunalilo, and the Government lands of Hionaa, Hokukano and Kaalaiki.

Q. State whether or not there is a kuleana within the Ahupuaa of Kioloku? A. There is.

Q. State whether or not there are more than one? A. Just one.

Q. Just one. What is the number of that award?

A. L. C. A. 9659 to Kekahuna.

Q. I will call your attention to the diagram in the original award of that kuleana, which specifies "Konohiki" on four sides of it, and ask you to point out to the Court on this map where those four sides are so designated on that diagram.

A. North side, konohiki; West side, konohiki; South side, konohiki; East side, Konohiki. (Showing.)

Q. State whether or not your plan here shows the

(Testimony of George F. Wright.)

location of that award within Kioloku?

A. It does.

Q. The designation of "Konohiki" on the north side of that award refers to what land?

A. To the land of Honuapo.

Q. That is privately owned land under the award to Lunalilo? A. Yes, sir.

Q. On the east side of that award, what land does the designation [105—37] "Konohiki" refer to?

A. Kioloku.

Q. And on the south side? A. Kioloku.

Q. And on the west side? A. Kioloku.

Q. What does the word "Konohiki" as used in old Government surveys indicate as to the character of the land thereby referred to?

A. It means the privately owned lands.

Mr. LIGHTFOOT.—The witness has qualified as a surveyor.

(Argument.)

Mr. ROBERTSON.—Q. Are you familiar with the Hawaiian language?

A. Yes, sir; well, along the line of surveying, and on law only a few words.

Q. You can hold an ordinary conversation with a Hawaiian witness?

A. Well, in anything pertaining to lands. If they are too fast I am no expert.

Q. But you are familiar with the terms used in the Government surveys? A. I am.

Q. In connection with the lands? A. I am.

The COURT.—I think the witness is qualified.

(Testimony of George F. Wright.)

The WITNESS.—Well, the term Konohiki, as a rule, is used in relation to lands privately owned,—not the Government.

Mr. ROBERTSON.—Q. And what is the term for owned by the Government?

A. They generally used “aupuni.” [106—38]

The COURT.—Q. Apuni? A. Aupuni.

Mr. ROBERTSON.—Q. So that where a kuleana is shown by award to be surrounded by land designated as “Konohiki,” it would indicate that it is situated within a larger land privately owned?

A. It would.

Q. State whether or not your plan here shows the location of Grant 2656 *ot* Kaiahua?

A. It shows a portion.

Q. Have you in mind the description of that land? A. I have.

Q. As given in the grant? A I have.

Q. It begins at the north corner at the sea and runs along the boundary of Kioloku. Will you show that, how that runs on the map here?

A. That's the point of beginning, and along the land of Kioloku, running towards the east.

The COURT.—You are letting your pencil go beyond.

Mr. ROBERTSON.—Q. Begins at the sea and runs westerly along Kioloku?

A. Runs towards the east along Kioloku.

Q. Isn't that west, according to the designation?

A. That's right, west, yes, west.

(Testimony of George F. Wright.)

Q. Are you sure that's right? Is north over here?

A. That's north. It runs from the sea along the land—

The COURT.—Q. If the bottom is north that would make it the right-hand side the east?

A. Yes.

Q. And the left-hand side the west? [107—39]

Q. You mean as it stands there now?

Mr. ROBERTSON.—Q. This is west here?

A. West.

Mr. LIGHTFOOT.—The other way around.

Mr. ROBERTSON.—If this is north here, this would be west, of course.

The COURT.—Opposite our right hand—

Mr. ROBERTSON.—Not the right hand of the map. This is the east.

The WITNESS.—This is the east (showing).

The COURT—Q. Where is this land situated, then?

The WITNESS.—It is the same on that map.

The COURT.—Q. Isn't it on the west side of Hawaii? A. It is in Kau.

Q. Well, that would be the west side?

A. South.

Q. Well, that land extends along north and south or east and west? A. East and west.

Mr. ROBERTSON.—Hilo is on the east coast, Honuapo is on the south coast.

The COURT.—The waterfront is the eastern end of the land.

(Testimony of George F. Wright.)

Mr. ROBERTSON.—Q. This—according to the description in the grant, Mr. Wright, it runs along the land of Kaleikau. Is that shown on your plan?

A. It is. (Pointing.) It is shown on the plan.

Q. And what is the number of Kaleikau's grant?

A. 2748.

Q. Then it runs along the land of Kauwemaka; is that shown on your plan? [108—40]

A. I show grant 2118 to Keawemaka.

Q. According to the grant it is Kauwemaka. At any rate, that is the adjoining land to grant 2748.

A. It is.

Q. Then the next course runs along—the words given in the grant being “Ke aupuni”; where is that on your plan?

A. That is not shown, but it would be a little south and adjoining grant 2118, along the south run of grant 2118.

Q. South of grant 2118? A. Yes.

Q. “Ke aupuni” there, meaning Government land? A. Yes.

Q. And what Government land does this grant adjoin along that course?

A. It is in the general land of Kaunamano. Several small names in there of different Government lands known as Kaunamano.

Q. The Ahupuaa of Kaunamano is a Government land, is it? A. It is.

Q. Then it runs along the land of Kalapunai; is that shown on your plan here?

A. No, but that is a grant to the south of the

(Testimony of George F. Wright.)

Government land which is mentioned in the previous course.

Q. Then it runs again along the Aupuni,—meaning Government? A. Yes.

Q. What side of this grant is that?

A. That would be the south side of grant 2656.

Q. And what Government land is there on that side of this grant?

A. Well, that land at the present is granted; at that time it was Kaunamano. They refer to Government land along—the adjoining piece was granted. [109—41]

Q. That course, like one of the others we have had, runs along the Government land of Kaunamano? A. It does.

Q. The designation in the grant being “Ke Aupuni?” A. Yes.

Q. You have already stated, I believe, that your plan here shows the location of grant 2748?

A. I have.

Q. The correct name of that is—of the awardee, or the grantee rather, according to the record here, is Kaleiku; you have it marked there “Kaleikau?”

A. Kaleikau.

Q. At any rate, that is the identical piece 2748?

A. It is.

Q. The first course of that land, as given in the grant, is along Kauwemaka; you have there “Keawemaka”? A. Keawemaka.

Q. That is which side?

A. The south side of grant 2748.

(Testimony of George F. Wright.)

Q. Then it runs along ke aupuni, meaning Government, in a northeasterly direction.—

A. Well, what was the bearing of the first line?

Q. Well, let's see. This begins at the west corner, as I understand this, and runs along Kauwemaka—I guess you'd better run that over yourself, (Hands witness book) get those directions.

A. Then it runs southeast along Kauwemaka, then northeast along Government land.

Q. What Government land is that referring to?

A. That is referring to grant 2656 to Kaiahua. At that time [110—42] most likely grant 2656 was not granted and was known as Government land.

Q. Then that would be the Ahupuaa of Kaunamano? A. Yes, sir.

Q. As a matter of fact this grant we are speaking of is a grant within the Ahupuaa of Kaunamano?

A. It is. The next course I had there reads, "North 79 $\frac{1}{4}$ West 21.28 chains by the previous course along Government lands to the boundary of Kioloku."

Q. Yes, and that brings it to the boundary of the land in dispute in this case? A. It does.

Q. And the Kioloku mentioned in that grant is the Kioloku of which we are speaking in this case?

A. It is.

Q. Now referring, Mr. Wright, to the—to boundary certificate No. 74 of the Ahupuaa of Honuapo, and I will call your attention to the first course.

(Testimony of George F. Wright.)

It is north 74 degrees west 25 chains along portion of Hionaa sold to Kelii, Patent No. 826 and Aupuni, is it not? A. That's right.

Q. "Aupuni" there refers to certain Government land? A. It does.

Q. What Government land does it refer to?

A. To the Government land of Hionaa; a portion of the Government land of Hionaa.

Q. Will you please point out to the court where that course runs along Hionaa?

The COURT.—I see Hionaa there twice.

The WITNESS.—It is a Government land with several grants sold. [111—43]

Mr. ROBERTSON.—Q. That is, the easterly portion of Hionaa from the sea up to this dotted line has since been divided up into various grants and sold by the Government, has it not?

A. It has.

Q. Yes. Now where does that first course that we have just read of the Ahupuaa of Honuapo bring you to?

A. Shall I mark the point? Right from the sea up to this point here.

Q. Designated on your plan here along portion of Hionaa sold by grant 826 and Government?

A. And Government.

Q. In other words you have put on your plan there practically along course first given in the boundary certificate? A. I have.

Q. Now will you turn to the 16th course as given in that boundary certificate, which reads: "South

(Testimony of George F. Wright.)

40 $\frac{1}{4}$ degrees east 34.70 chains along Kioloku to X cut in bed-rock of stream at Kamaili"; where is that course? A. That is here (Showing).

The COURT.—Well, is that as far as it goes?

A. No, Honuapo; that is the outline.

Q. Yes; runs the full length.

Mr. ROBERTSON.—We have jumped, your Honor, from the first course to the 16th, you see.

The COURT.—Yes.

Mr. ROBERTSON.—Q. Will you please designate with a colored pencil on this line here the 16th course that we have just referred to? Mark it "16" if you can.

(Witness marks.)

Q. I think that will do. Now will you turn to the 23d [112—44] course, which reads: "South 70 $\frac{1}{2}$ degrees East 45.57 chains along Kioloku to a pile of stone"; where is that on your plan?

A. (Showing.) Here, 23.

Q. You have marked it "23" on the map—plan, have you?

A. That is, the three courses there are practically one line; 23 may come a little further down—unless I use the scale to get it—but it is one of these three courses, see? See, the 21st course is a short course, with 3.4 chains; it must be in here, see? Then the 22d is 19 chains. There's 345 chains along Kioloku, so—

Q. Well, that is substantially where you have marked it there? A. Yes, a portion of this line.

Q. State whether or not in the boundary certifi-

(Testimony of George F. Wright.)

cate the courses given between No. 16 and No. 23 mention any land?

A. 16 mentions along Kioloku—

Q. Yes. Now between 16 and 23— A. 17—

Q. —is the adjoining land named, or does it simply run by courses and distances?

A. It runs by courses and distances.

The COURT.—Q. And 23 along—?

A. Kioloku.

Mr. ROBERTSON.—Q. I want to call your attention now to Course No. 9. How does it read?

A. "South 6.6 chains along Government portion of Hionaa."

Q. What part of your plan would that 9th course come on?

A. I will mark it No. "9," this short course running practically north and south.

The COURT.—Q. What is the occasion of those double lines [113—45] there?

A. Well, I have simply put an arrow from here to here, along Government portion of Hionaa.

Q. There seems to be a long narrow strip of land—? A. Yes, sir.

Q. Yes.

A. That is just to show the distance Kioloku borders on the Government land of Hionaa.

Mr. ROBERTSON.—Q. That, go along lines that the Judge refers to, with an arrow at either end, are not boundary marks?

A. No, it simply shows the extent where Honuapo and Hionaa joined one another.

(Testimony of George F. Wright.)

Q. Simply a surveyor's indication. I will call your attention to the 15th course in that boundary certificate. How does that read?

A. "15th. South $36\frac{1}{2}$ degrees west 29.8 chains to Kahawai on the boundary of Kioloku."

Q. What point does that bring you to?

A. That begins at this point and runs to this point. (Showing.) I will mark the course "15."

Q. This is not along Kioloku, it is to Kioloku?

A. It says to Kahawai on the boundary.

Q. Well, you might mark "15." What is the 10th course in that description?

A. 10th. North $83\frac{1}{4}$ degrees west 27.4 chains along do., meaning along Hionaa, to pile of stones. This, I will mark that "10."

Q. Well, that abbreviation "do." means "the same?"

A. Along the same, referring to the land of Hionaa.

Q. The line immediately above that, under which "do." is written, reads, "along Government portion of Hionaa," doesn't [114—46] it?

A. It does.

Q. I want to direct your attention now to certificate of boundaries No. 91, which is in evidence here, giving the boundaries of the Ahupuaa of Waiohinu. No. 91. I will ask you first whether any portion of the land of Waiohinu is shown by your plan here?

A. Yes.

Q. Whereabouts?

A. The portion marked "Waiohinu Government

(Testimony of George F. Wright.)

Boundary Certificate 91," southwest of Kaalaiki and west of Kaunamano.

Q. It is a land—It is a Government land, is it not?

A. Formerly Crown Land, now Government.

Q. Crown Land, yes, and adjoins Kaalaiki on one *said* and Kaunamano on the other side?

A. Yes.

Q. So far as this map shows? A. It does.

Q. I will refer you to the 20th course in the description given in that certificate of boundaries and ask you whether this map shows it?

A. It does not.

Mr. ROBERTSON.—Have you that map I asked you for? (To Mr. Lightfoot.) Mr. Kanakanui, at my request, has brought into court from the survey department a more general map of the district here, which I don't want to put in evidence but I have to have this witness have the use of it for the purpose of explaining his testimony with reference to the land of Waiohinu.

Q. I will ask you to look at this map that Mr. Kanakanui just produced. Does that show the land of Waiohinu? [115—47]

A. It does; the lower portion of it, not the mauka portion of it.

Q. I see. Can you state whether or not—can you show the court by that map where the 20th course in Boundary Certificate No. 91 runs?

A. I can.

Q. That course reads: "North 30 degrees West

(Testimony of George F. Wright.)

12.60 chains along Government portion of Kiolakaa to a pile of stones," does it not? A. It does.

Q. Show the court where that is.

(Witness shows.)

Q. What is this land that is referred to, the land of Kiolakaa? A. Government land of Kiolakaa.

Q. In what direction from Kioloku is that?

A. Westward of Kioloku.

Q. The land of Kaunamano intervenes, does it? How may lands intervene between Kioloku and Kiolakaa?

A. From Kioloku, Kaunamano, Kahilipali nui, Kahilipali iki, Waiohinu and then Kiolakaa. There are several Government lands, but the general name is Kaunamano.

Q. Now the 22d course in that boundary certificate reads; "North 40½ degrees West 33.08 chains along same"; that is the same land, the Government land of Kiolakaa, is it? A. It is.

Q. And the 23d course reads: "North 34 degrees West 16.17 chains along the same"; that is still the government land of Kiolakaa, is it? A. It is.

Q. Now the 24th course in that certificate reads: "North 28 degrees 43 minutes West 121.25 chains along Government land to Kalahupala in scattering woods." [116—48]

A. Thence along Government land to Kalahupala in scattering woods."

Q. Yes. What Government land does that 121 chain run—?

A. It refers to the same land of Kiolakaa.

(Testimony of George F. Wright.)

Q. Kiolakaa. Now the 33d course runs, south 24 degrees 10 minutes east 495 chains along Kaalaiki Government land to Hapuumanu, a high prominence at the lower edge of the thick ohia forest?

A. It does.

Q. Where is that?

Mr. LIGHTFOOT.—I really—of course counsel promised to connect all this and I have been making no objection on that ground, but we are away and gone from the title that we are interested in.

Mr. ROBERTSON.—The idea is this, the point I am making, and it comes out very clearly, that wherever that land of Waiohinu runs along Government land it says Government land in the boundary certificate, but when it says Kioloku it doesn't designate Kioloku as Government land, which I contend is a very important admission on the part of the old Government surveyors that Kioloku was not Government land.

(Argument.)

The COURT.—Well, we will let it go in. Go ahead.

Mr. ROBERTSON.—Q. Where is that? The question is, Mr. Wright, along what land does that 495 chains run?

A. Along Kaalaiki Government land.

Q. On which side of Waiohinu is that, generally speaking? A. On the north side.

Q. On the north side. Now I direct your attention to the 34th course, which reads: "South 26 degrees East 30 chains [117—49] along Kaunamano

(Testimony of George F. Wright.)

Government land to a point from which the west corner of Kioloku land the letter "A" cut in bed-rock at the junction of two streams bears," etc. That is the Government land of Kaunamano that you have already referred to in your evidence, is it?

A. It is.

Q. And on what side, generally speaking, of Waiohinu is that portion of the Government land of Kaunamano? A. North side.

Q. Now I will direct your attention to the 67th course in that certificate, which reads: "South 12 degrees East 32.65 chains to a pile of stone at the top of the pali; thence along the Kahaea Government land"; what land is that, Mr. Wright?

A. That is the name of the land within Kahili-pali-iki and the course mentioned as being along the Government land of Kahaea is right here. (Showing.)

Q. That is a Government land? A. Yes.

Q. Generally speaking lying on what side of Waiohinu? A. On the east side.

Mr. LIGHTFOOT.—May we have this map marked so that—of course it can't remain in court—so that we can refer to it afterwards in cross-examination?

Mr. ROBERTSON.—You can certainly refer to it on cross-examination. I am not offering it in evidence; I am simply using it for the purpose of refreshing the witness' memory, because his plan here that we have put in evidence does not cover the ground that this other one does.

(Testimony of George F. Wright.)

The COURT.—I will ask that the same map be produced. (1455.)

Mr. LIGHTFOOT.—That will cover it.

(Adjournment until to-morrow.) [118—50]

Territory of Hawaii.

Land Court.

PETITION No. 283.

In the Matter of the Petition of the TERRITORY OF HAWAII to Register and Confirm Its Title to the AHUPUAA OF KIOLOKU, in the District of Kau, Island and County of Hawaii, Territory of Hawaii,

Oct. 25, 1918.

Mr. ROBERTSON.—If the Court please, we have some witnesses here, two of them from Kau, to give evidence to the effect that the Hutchinson Sugar Co. and its predecessors in interest have not only been in possession of this land for the period covered by the previous admission to date but they have actually used the land for such purposes as the land is adapted to, namely part of it for the growing of sugar cane, a part of it for pasturage of their animals. I understand the Government is now prepared to extend their admission to that fact.

Mr. LIGHTFOOT.—So as to avoid the necessity of calling these witnesses and allowing them to return home.

The COURT.—That will extend to the entire piece of land?

(Testimony of Alonzo Gartley.)

Mr. ROBERTSON.—Yes, your Honor, the land in dispute.

The COURT.—Do you make that admission?

Mr. LIGHTFOOT.—Yes, your Honor.

The COURT.—Let the record show it.

Mr. ROBERTSON.—I have two witnesses to call, short witnesses, if it is agreeable to counsel on the other side. [119—51]

Testimony of Alonzo Gartley, for Respondent.

ALONZA GARTLEY, a witness called on behalf of Contestant Hutchinson Sugar Co., being first duly sworn, testified as follows:

Direct examination by Mr. ROBERTSON.

- Q. Your name? A. Alonzo Gartley.
- Q. Where do you live? A. Honolulu.
- Q. What is your business, occupation? A. I am manager of C. Brewer & Co.
- Q. State whether or not—that is C. Brewer & Co., Ltd.? A. Yes, sir, C. Brewer & Co., Ltd.
- Q. State whether or not C. Brewer & Co., Ltd., are the local agents for the Hutchinson Sugar Plantation in Kau? A. They are.

Q. Are you familiar with the plantation property? A. Fairly, yes, sir.

Q. Do you know the land of Kioloku? A. Kioloku, yes, sir.

Q. Does that form a portion of the plantation property? A. It does.

Mr. LIGHTFOOT.—That is a conclusion of law. We object to it.

(Testimony of Alonzo Gartley.)

The COURT.—Whether or not it forms a part of the plantation?

Mr. ROBERTSON.—It is before the Court by way of admission that the Hutchinson Sugar Plantation is in possession and use of the land.

The COURT.—Objection is overruled.

(Answer read by reporter.)

Mr. ROBERTSON.—Q. Are you familiar with the value of plantation lands in this Territory?
[120—52]

A. I am. I have knowledge of some values.

Q. Including the values of the Hutchinson Sugar Company's lands? A. I think I have.

Q. What in your opinion is the value of the land of Kioloku which is in dispute in this case, approximately?

Mr. LIGHTFOOT.—I should like to ask the purpose of this? It doesn't seem to me to be material to any issue before the court.

The COURT.—Possibly an appeal to the Circuit Court of Appeals?

Mr. ROBERTSON.—Yes, your Honor. While I have very high expectations of getting a favorable decision from your Honor, sometimes counsel are mistaken in their sizing up of cases. In case the decision goes against us we will resort to other proceedings.

Mr. LIGHTFOOT.—I don't think it is a proper matter to be brought in this way.

The COURT.—If that is your only objection I will admit it.

(Testimony of Joseph S. Emerson.)

Mr. LIGHTFOOT.—It doesn't seem to me to be material to any issue.

(Argument.)

The COURT.—I will permit the question.

(Question read by official reporter.)

A. I should say eleven thousand dollars.

Mr. ROBERTSON.—Cross-examine.

Mr. LIGHTFOOT.—No cross-examination.

Mr. ROBERTSON.—That's all. [121—53]

Testimony of Joseph S. Emerson, for Respondent.

JOSEPH S. EMERSON, a witness called on behalf of contestant, being first duly sworn, testified as follows:

Direct Examination by Mr. ROBERTSON.

Q. What is your name?

A. Joseph S. Emerson.

Q. Where do you reside?

A. I reside on Magazine Street in Honolulu.

Q. Were you born in these Islands?

A. Born on Maui, Lahainaluna.

Q. And have you lived here all your life?

A. Yes, except when I have been visiting in America, for some eight years, and in Europe for some six or seven years; otherwise I have lived here the rest of my life.

Q. How old are you Mr. Emerson?

A. Seventy-five.

Q. State whether or not you are familiar with the Hawaiian language?

A. I have been brought up in the use of two lan-

(Testimony of Joseph S. Emerson.)

guages, Hawaiian and English, from my childhood.

Q. Do you read and write it as well as speak it?

A. Yes.

Q. Have you a profession?

A. I have been a civil engineer and surveyor, graduate of the Institute of Technology and for a time was doing civil engineering work, and lately, in the Hawaiian Islands, I have been confining myself chiefly to surveying, and for a time was the surveyor of the land court, the Torrens court.

Q. Yes, a part of the time in Government employ? A. For twenty-nine years.

Q. And part of the time practicing your profession on your [122—54] own account?

A. For a very short time.

Q. Will you please tell us what is meant by the Hawaiian phrase "Aina Konohiki"?

A. Aina means land, Konohiki is a title which comes down from feudal times, meaning the landlord. The land in the olden times, before the Great Mahele, was all nominally and really, that is, in fact, the property of the King, and he divided it, and when a revolution took place he could divide it as he pleased, giving this tract to one konohiki, one chief, and another to another; and it—as I always heard it in my boyhood, it was constantly used, it was the chief who owned the land; that is, owned any particular piece of land.

Q. Yes.

A. And he was the feudal lord.

Q. Now you speak of—you used the word "revolu-

(Testimony of Joseph S. Emerson.)
tion" there; what do you refer to?

A. When King Kamehameha First changed the ownership and became the conqueror he could divide up land anew to his followers, as he did, as history records; so that he was the lord and the owner of the land, and all ownership came under the fact that it was from him; he was the source of all ownership and power.

Q. Yes. Well, this revolution that you refer to.—

A. Revolution, the conquest by Kamehameha First.

Q. I see. Well now, later on, in the reign of Kamehameha Third, in the latter part of 1845, particularly, what happened with reference to the lands of this—of these Islands?

A. There was a Mahele took place. The lands were then divided into three great divisions; whereas it all belonged to the king and to whom he gave it, now one-third was set apart for the [123—55] Government, one-third for the King, maintenance of royalty, the royal estate, and one part for the chiefs.

Q. What was the second class of land called; that is, the lands that were set apart for the support of the Crown?

A. It was called Aina Aupuni. The Crown Land was—I don't mean—I didn't mean that. The Crown Land was the—it was called Crown Lands in English—

Q. Not Aupuni but Crown Lands?

A. Not Aupuni, Aupuni being the Government—

(Testimony of Joseph S. Emerson.)

I retract what I said; it was merely a slip of the tongue. The Government lands was the Aina Au-puni; the Crown lands was—they used the word “alii.” And then I say were the konohikis, who were also the various chiefs.

Q. You used the word “Mahele,” which is a Hawaiian word meaning what in English?

A. Division.

Q. So that this mahele that happened in the reign of Kamehameha Third resulted in the division and classification of the large lands of the islands into three classes, the Government lands, or called “Au-puni” in Hawaiian, the Crown lands, which were set apart for the support of the monarch—Monarchy, and, thirdly, the konohikis lands that were set apart for the chiefs, is that it?

A. For the chiefs. I won’t say that the konohiki was entirely, always confined to that part, but I never heard it used with reference to the Government land. That is, the chiefs were the great konohikis and they used—they spoke of the “aina Alii.”

Q. Meaning the Crown Land?

A. Meaning the Crown Land, yes, Crown Land; but I have never heard the name konohiki applied to the Government lands. [124—56]

Q. Exactly. Now then, in addition to those three general classes of the large lands of the Territory, in what category falls the smaller lots awarded to the common people?

A. We had at this time Judge Lee, Judge Robertson, Mr.—there were others, who were doing their

(Testimony of Joseph S. Emerson.)

work to get the land into the hands of the common people, to the individual who had hitherto owned no right in his own land; it could be taken from him. Judge Lee, being the chief man in the case, did his best to bring the lands that they had been occupying and been cultivating into their possession, and he—

Q. How was that accomplished?

A. There was a raft of surveyors—

Q. I don't mean into details, but through what official body or organization was this division to the common people made?

A. Through the—I forget the title, name—

Q. Land Commission?

A. The Land Commission; through the Land Commission. The claims of a particular person—the claim of a particular person was brought before them, it was examined into and if accepted this person was given a title to that land.

Q. And those—

Mr. LIGHTFOOT.—I didn't catch quite distinctly the question.

The COURT.—That it was given, awarded.

The WITNESS.—It was awarded.

Mr. LIGHTFOOT.—I got the answer and I didn't get the question.

The WITNESS.—The title was awarded.

(Question of Mr. Robertson read by reporter as follows: "I don't mean in details, but through what official body or organization was this division to the common people made?")

Mr. ROBERTSON.—Q. These smaller lots that

(Testimony of Joseph S. Emerson.)

were awarded to [125—57] the common people were called kuleanas? A. Kuleanas.

Q. And the official instrument which evidenced the award of a kuleana was called the Land Commission Award, was it not?

A. Yes, Land Commission Award.

Q. Now if, Mr. Emerson, a Land Commission Award of a kuleana should describe the kuleana as bounding on or being contained within the "konohiki land," what would that indicate as to the nature of the land upon which the kuleana bounded or was surrounded, as the case may be?

A. So far as my knowledge extends, and acquaintance with such cases, I should at once assume that it was not Government, because if it were Government "Aupuni" would have been placed there. I think it must have been a—one of the chiefs or persons who had bought—who had come in possession of the land; that is, some private owner.

Q. Or the chief may have obtained it through the Mahele that you have referred to?

A. Through the Mahele.

Q. Yes.

A. It had come into private possession either through the Mahele or by purchase.

Q. So that—

A. For instance, if a man had purchased of the Government and had become the suzerain, the lord, of that land, I should consider—I understand that he was the konohiki, the owner?

Q. Yes.

(Testimony of Joseph S. Emerson.)

A. Though the word "konohiki" has been used, for instance in Waialua, as the person—the over-lord who represented him. Now, for instance—
[126—58]

Q. That is the man in the immediate charge?

A. The man in charge. For instance, Victoria Kamamalu, who owned very largely in Waialua, and under her was Laanui, and, afterwards, Kuokoa. Now, I was not so much acquainted during Laanui's life, but under Kuokoa; Kuokoa was the konohiki but he was not the owner; he represented the owner; he was the man in charge.

Q. Yes, that's all right. Now, if an award of a kuleana—No, if, in the award of a kuleana, the description of a kuleana says that it is surrounded by Aupuni, that would indicate that that kuleana was—

A. Surrounded or had been—

Q. Government land?

A. Had been a part of the Government land and was surrounded by land that still remained Government land.

Q. Yes, and if, on the other hand, it was described as situated within konohiki land, that would indicate that it was situated within land not Government land?

A. That is the way I should understand it.

Cross-examination.

By Mr. LIGHTFOOT.

Q. Mr. Emerson, you are familiar with Andrews' Hawaiian Dictionary, are you? A. Yes.

Q. Do you consider Mr. Andrews an authority

(Testimony of Joseph S. Emerson.)

on the Hawaiian language? A. Not always.

Q. Not always? A. Not always.

Q. The definition—I will read the definition as given by [127—59] Mr. Andrews of the word “konohiki”: “konohiki. substantive. The head man of an ahupuaa. 2. A person who had charge of a land with others under him; o ka mea ai aina, he konohiki ia.” Do you consider that a proper definition of the word “konohiki,” Mr. Emerson?

A. It is a fairly good—

Q. Fairly good?

A. —statement of the meaning of the word “konohiki.”

Q. Are you familiar with a paper on the history of Hawaiian Government surveys with notes on land matters in Hawaii by Curtis J. Lyons, assistant—are you?

A. I have read it. I was familiar with it; I have not looked at it for some time.

Q. Would you consider that Professor Lyons was an authority on ancient Hawaiian land matters?

A. I think so.

Q. On page 28 of that paper as printed by the Hawaiian Gazette Co. in 1903, I find this “The second feature”—I have to go back. Cross that out. “These different pieces are called variously either by their own individual names or by that of the whole ili, thus puzzling one sadly when attempting to obtain information with respect to them. The second feature is referred to in the word ‘ku,’ short for ‘ili kupono.’ There were two kinds of ili, the

(Testimony of Joseph S. Emerson.)
ili of the ahupuaa and the ili kupono"—

A. Kupono.

Q. Kupono. "The ili of the ahupuaa was a subdivision for the conveyance of the chief holding the ahupuaa, ili ai ahupuaa. The konohikis of those divisions were only the agents of the said chief, all the revenues of the land included going to him and the said land, in Hawaiian parlance, 'belonging to the ahupuaa'." [128—60] What would you say of that definition as given by Lyons of konohiki?

Mr. ROBERTSON.—I object to that as irrelevant and immaterial, what Professor Lyons is writing about there now is ilis. No evidence that Kioloku was an ili.

(Argument.)

The WITNESS.—I should like to look at that statement in order to see just what it means.

Mr. LIGHTFOOT.—Showing the witness the pamphlet to which I have referred, on page 28 (Showing witness). The last part of this paragraph here.

A. That is, the ili kupono?

Q. Ili kupono.

A. I consider Mr. Lyons as a very high authority.

Q. Yes, and that is correct— A. I think—

Q. — According to your idea?

A. I think that I shouldn't object to what Mr. Lyons says here.

Mr. LIGHTFOOT.—I will offer this pamphlet in evidence.

Mr. ROBERTSON.—We object as irrelevant and

(Testimony of Joseph S. Emerson.)

immaterial. We do not dispute what has been read into the record here.

Mr. LIGHTFOOT.—All right, I will withdraw the offer, then.

The WITNESS.—I think it would be presumption on my part or on the part of any person living in the Hawaiian Islands at the present time to say that he knew more about it than Mr. Lyons. Mr. Lyons was high authority.

Mr. LIGHTFOOT.—Q. As a matter of fact, Mr. Emerson, in the last analysis, is there not, in the word “konkhiki” the basic idea of agency for another?

A. The word “konohiki,” as I have just said a little while [129—61] ago, in my childhood, when Hawaiian was the common language of the place, and English was only spoken by a few—referred in Waialua to such a man as Kuokoa, who represented the owner; he was the agent of the owner.

Q. Yes.

A. And Laanui, as I said, who was the konohiki; so that the word “konohiki” represents the acting—agent acting for the owner.

Q. Yes, quite so.

The COURT.—Why is the land itself called “Konohiki,” when it is held—I will leave it there. Well, why is the land itself called “Konohiki”? I understand “konohiki” means agent or—that is, the individual; now, why is the land called “Konohiki”? A. This term, “konohiki land”?

Q. Yes.

(Testimony of Joseph S. Emerson.)

A. After discussion of it now, "konohiki land," as my association of it goes, is the land owned by a person who has that land as distinguished from general land, which is the Government land. That is my association of the idea. If I were—if the—you ask a man, "To whom does that land belong"? "To the konohiki." A konohiki had the feudal rights, and it is coming back—coming down from the old feudal times. As an example, the free fishing on the Government lands, but on the konohiki lands, in the olden times, in my childhood, the konohiki could forbid fishing, and getting this particular fish. (Speaks in Hawaiian.) "Kono-hiki, it is konohiki part, but the other is aina aupuni; that's all right, you can fish there." Individual ownership as distinguished from the collective ownership of the Government was the association of idea in my mind as I heard it used in my childhood. [130—62]

Mr. LIGHTFOOT.—Q. The land, then, I understand, Mr. Emerson, in ancient times, in the way it was held by a person as the agent for another, was said to be konohiki land, is that right?

A. Yes.

Q. Now, prior to the Great Mahele of 1848, you have said that all the land belonged to the king; that is—

Q. —a fair statement of it?

A. All rights were derived—

Q. From the king? A. From his will.

Q. Yes. In a broad sense, it may be said that all

(Testimony of Joseph S. Emerson.)

lands belonged to the king? A. Yes.

Q. Really to the king and chiefs—

A. Yes.

Q. —according to the constitution of 1840. Now, the king didn't personally administer the individual lands? A. Not at all.

Q. He had other people to care for them, did he not? A. Yes.

Q. I am speaking of the time now, before the Great Mahere. A. Yes.

A. What were those people called?

A. Konohiki.

Q. Konohiki; so that, before the Great Mahele, the custodian under the king of an ahupuaa was called a konohiki? A. Yes.

Q. Now, it was not until after the Great Mahele and after the establishment of the Land Commission to quiet titles to land [131—63] that there came into use the definitions of the three kinds of lands under which Kamehameha the Third had divided his kingdom? A. I believe so.

Q. Those lands, which were set apart for the purposes of the Government were called—

A. Aina aupuni.

Q. Aina aupuni. They were subdivided into school lands, and fort lands, were they not?

A. Yes.

Q. Aina aupuni; and in descriptions generally, after the land commission began to make its awards, the descriptions generally, referring to lands as "Aina aupuni," referred to Government land?

(Testimony of Joseph S. Emerson.)

A. To Government lands.

Q. Aina aupuni? A. Yes, sir.

Q. Now, Crown lands were called "Lei Alii," "Aina Lei Alii"? A. "Lei Alii," yes.

Q. And those that were set apart for the people, approximately one-third, were called "konohiki," land, is that right?

A. The konohiki lands were the konohikis—they were chiefs.

Q. They were chiefs?

A. Chiefs, as distinguished from the king.

Q. Yes.

A. Some of the chiefs had great possessions, and it was not Lei Alii that—for instance, Ruth Keelikolani owned the land in many cases, not because she wasn't the—she wasn't an alii, and it wasn't hers as an alii,—as the king—the supreme ruler,—but as a chief. [132—64]

Q. I see. Now, prior to the Great Mahele, there were many surveys of lands, were there not? There were surveyors here prior to the mahele of 1848?

A. I am not familiar with any particular land just now, that was surveyed. I won't say it was not so.

Q. Yes, I see; I don't—

A. The surveys were very rude, extremely rude.

Q. Rude? A. Extremely rude, yes.

Q. Yes.

A. The introduction of surveying instruments was largely, as my recollection goes, through Judge Lee. Of course, there were—I don't say that there were

(Testimony of Joseph S. Emerson.)

not before, but when the pa-nana was introduced into the Hawaiian Islands it was largely Judge Lee's work in securing so many—

Q. I see. Now, prior to the Great Mahele, those who were in charge under the king, being called "konohiki," didn't their description as "konohiki" continue to extend beyond the Great Mahele and the awards of the land commission; that is to say, prior to the Mahele and survey, the owner of land under the king was known as "konohiki," and afterwards didn't that appellation of "konohiki" still attach to him, so that he was afterwards called, and perhaps, strictly, wrongfully called "konohiki"?

A. I have no case in mind.

Q. You have no case in mind?

A. Where that was the case.

Q. I see.

A. I don't want to absolutely say it was not so or that it was so.

Q. Are you familiar with the Ahupuaa of Waihinu? [133—65] A. I am.

Q. What is that?

A. Waiohinu is an ahupuaa in Kau, Hawaii.

Q. Yes.

A. I don't mean to say that I am acquainted with its boundaries.

Q. No, no. You know that it is Crown Land?

A. I have lived there.

Q. Yes.

A. I have lived there, and I was acquainted with the land.

(Testimony of Joseph S. Emerson.)

Q. Are you— Can you say now that it was Crown land—that it is Crown land, Government land or konohiki land?

A. I don't know; that comes—that didn't come up; it was before I was a surveyor that I was living there. My stay there had nothing to do with surveying, and I was purely working under C. N. Spencer, connected with sugar, and my knowledge of things at that time was not that of a surveyor.

Q. I show you map of Kau, Hawaii—

A. Kohala?

Q. No, Kau, Hawaii, from Punaluu to Kalae, from surveys by M. D. Monsarrat, J. S. Emerson— You are the J. S. Emerson? A. Yes.

Q. F. S. Lyman. May by F. S. Dodge, 1894, being Government Register Map No. —, being Registered Map 1807; and ask you to— Would you mind stepping down and looking at this, please? Do you recognize this map, sir? A. Yes.

Q. Just look at the Ahupuaa of Waiohinu.

A. Here.

Q. Yes, Waiohinu. Can you tell by looking at that land, [134—66] referring to the original, whether it is Crown land or Government land, or konohiki land?

A. I would say about this that my work in connection with this part of the country was purely geodetic; it had nothing to do with determining the ownership of this land; that was done by other members of the survey.

(Testimony of Joseph S. Emerson.)

The COURT.—Q. You did not deal with the boundaries there?

A. No, not there. I did in some cases, some other work, but not here. I had nothing to do with the boundaries; my work was purely geodetic, and if I should make a statement that this was such and such, I would have simply to report what others had investigated.

Q. You don't know of your own knowledge?

A. I do not.

Q. That Waiohinu is, in fact, Crown land?

A. No, no, I am not—would have to simply take the authority of the map, and I was not responsible for that feature of the map.

Mr. LIGHTFOOT.—Q. Let me ask you this question: If a kuleana should be located within an ahupuaa which was Crown land, would its boundaries within the ahupuaa be correctly described as "konohiki." A. If it was Crown?

Q. Crown, yes.

A. I can't say that it would not be.

Q. Can't say that it would not be.

The COURT.—Q. What would be the usual, the ordinary way of describing the boundaries of a kuleana so situated?

A. I think that the term kuleana—I think the term konohiki could be used.

Q. I am speaking of the ordinary, usual method of describing the boundaries of a kuleana so situated; would you say "konohiki"? [135—67]

Mr. ROBERTSON.—I object to this line of evi-

(Testimony of Joseph S. Emerson.)

dence, if the Court please, on the ground that it is immaterial and irrelevant, owing to the fact that the Government here is not claiming this as crown land and never has. They came into court claiming this was an unassigned land, and, therefore, by operation of law, the title of the land remained in the Government.

The COURT.—I will permit the question.

Mr. LIGHTFOOT.—Q. Now, what I should like to have is an answer to the Court's last question. Have you got that? If you recall the question, otherwise it may be read to you.

A. The question was, what would the term usually be used?

The COURT.—Q. Yes, if that kuleana was situated within the boundaries of crown land.

A. I confess I am unable to answer that question through ignorance. I don't—I am not sure of any particular case. I haven't had anything to do particularly that would entitle me to make a positive answer one way or another.

Mr. LIGHTFOOT.—Q. Do I understand, Mr. Emerson, that when you speak of your familiarity with the word "konihiki" you mean that are only familiar with the use of that term as relating to the ownership of private individuals, and as to any ownership as an agency of the Government you know nothing?

A. I don't know of the term konohiki having been applied to the representative of Government owner-

(Testimony of Joseph S. Emerson.)

ship in the olden time. I am speaking of the early youth of the term.

Q. I should like to call your attention, Mr. Emerson, to map, Hawaiian Government Survey, Walter E. Wall, Surveyor, Government lot in Puueo, Kau, Hawaii, J. S. Emerson, Surveyor, being Registered Map No. 2197, and to call your attention to the Ahupuaa of [136—68] Puueo. Will you examine this map, please? You made that survey, did you not? A. Yes.

Q. Now, looking at the Ahupuaa of Puueo, I will ask you whether that is Government land?

Mr. ROBERTSON.—We object to the question as irrelevant and immaterial, if the Court please. It doesn't appear that Puueo was an adjoining land to Kioloku.

Mr. LIGHTFOOT.—This is what I want to get at,—not as referring particularly to any particular piece of land or trying the title to it, but on the question of whether or not there are awards and surveys of kuleanas withing Government lands which have the boundaries given as konohiki, and for that purpose we offer to show that this Government land of Puueo has within it certain kuleana or kuleanas which have the boundaries within the Government land described as konohiki, as controverting the position taken by my learned friend that that indicates a private ownership of land.

(Argument.)

The COURT.—I will permit the question. That

(Testimony of Joseph S. Emerson.)
is, assuming that it is Government land?

Mr. LIGHTFOOT.—Yes. I think Mr. Emerson said it was Government land.

The WITNESS.—I say that the map shows that I said it was Government land. I have forgotten entirely about it; my mind has been off this business now for a great many years, and I do not remember anything except the fact that I have got my name there and I was satisfied then with what I put down.

Mr. LIGHTFOOT.—Yes.

A. I am entirely forgetful during the past years of a great [137—69] many things that I knew then.

Q. And of course—

A. And I simply say that if my name is down there, I stand by it, that it was honest work.

Q. And that's all you know about it?

A. That's all I know about it, now.

Q. You don't know, then, as a matter of fact, and can't tell from an examination of this map, whether Puueo is Government land or not, is that true?

A. I only can tell by refreshing my memory by what I have put down there.

Q. Yes. Now, will you try and—

A. It says here it was a Government lot in Puueo. Now, here's a Government remainder and here is a—

The COURT.—I think, Mr. Lightfoot, before the question on cross-examination has any pertinency

(Testimony of Joseph S. Emerson.)

or any force it ought to appear that the land is Government land.

Mr. LIGHTFOOT.—I think so. I am trying to establish that fact now.

The WITNESS.—I stand by my map, that it was an honestly made map and that I put down the facts, and my only knowledge about it is what the map reveals now, because otherwise, other than that, I have forgotten all about it.

Mr. LIGHTFOOT.—Q. That's right, exactly, but, Mr. Emerson, looking at the map now, that you believe to be correct— A. Yes, sir, certainly.

Q. — you can't say—or can you say that Puueo is therein described as a Government land?

A. I said here it was a Government lot in Puueo, Now, I have put down this as Government—
[138—70]

Mr. ROBERTSON.—What do you mean by “this”? When you said “this” you pointed to a piece of land designated Puueo, remainder 130.5 acres, didn't you?

A. I was pointing to this and saying—

Mr. ROBERTSON.—I know, but when you say “this” that confers nothing to the record. The reporter doesn't get what you point at.

The WITNESS.—No. Excuse me.

Mr. ROBERTSON.—What did you point to when you used the word “this”?

A. I pointed to Government remainder—I was pointing to what is Government remainder. Now, the details of this have quite passed from my mind,

(Testimony of Joseph S. Emerson.)

so that I can only say that this was an honest piece of work and that I have gone into other things and that I wouldn't want to make any statement more than this, that the map was accepted as a correct map and was made with honest intent. Now—

Mr. LIGHTFOOT.—Q. Mr. Emerson, that isn't the question. No one is disputing the accuracy or the honest intent with which the map is executed; the only thing, the only question now before the Court is, I want to show,—and from you if I can, if not I can do it from other sources,—that the land of Puueo was Government land; that's the only thing the question is— From the examination of that map, can you say whether it was Government or not?

A. That is, the whole land, originally?

Q. Yes.

A. It would seem so. That would seem to be the fact, but my memory of the facts has entirely passed; I haven't thought [139—71] anything about these things—

The COURT.—Q. The question is, what does the map show, Mr. Emerson? To pick that map up what would you say as to whether that was Government land? Not only that you made it? But any other surveyor would pick it up, what would he say?

A. I should say that it was—it had been Government land and that a part of it had been sold and this was what remained to the Government. That is, it would seem to indicate that the whole

(Testimony of Joseph S. Emerson.)

land was originally—that it was Government land; otherwise I shouldn't—I don't know why it could have been called a Government remainder, unless the whole of the land—

Mr. LIGHTFOOT.—Q. Now, then, the map is described as a Government lot in Puueo, Kau, Hawaii? A. Yes.

Q. Now, the land to which this has particular reference is described, is it not—is included, is it not, within the green lines? Is that green or blue? Green lines. A. Yes.

Q. So the portion of this map included within the green lines is a piece of land situate within the Government lot, within Government land?

A. I should say so.

Q. Is that true? A. I should say so.

Q. Now, could those boundaries, then—could the boundaries of that land, then, be described as konohiki?

Mr. ROBERTSON.—Objected to as incompetent, irrelevant and immaterial.

Mr. LIGHTFOOT.—Q. Or Aupuni?

Mr. ROBERTSON.—Irrelevant and immaterial, if the Court please, [140—72] absolutely vague and too general.

The COURT.—I think the objection is well taken. The question is, looking at the kuleana there, how are the boundaries designated? The question is, how are they actually designated?

Mr. ROBERTSON.—Furthermore, I have the further objection, your Honor, it is not proper

(Testimony of Joseph S. Emerson.)
cross-examination, if the Court please.

Mr. LIGHTFOOT.—This is our effort; the effort is to show that here is a kuleana within the Government land of Puueo in Kau, where the boundaries of the kuleana are given as konohiki when, as a matter of fact, they bound—they face on Government land.

The COURT.—You might do that with your own testimony.

(Argument.)

I think the objection is well taken.

Mr. LIGHTFOOT.—Q. Mr. Emerson, you used the expression, referring to the surveyors, on your direct examination, I understood you to say,—correct me if I am wrong,—“there were a raft of surveyors”? A. I used that expression.

Q. Mean a— A. Great number?

Q. Eh? A. A great number.

Q. Yes. Now 1848—

Mr. ROBERTSON.—I didn’t understand him to say there was a raft of surveyors in 1848.

The WITNESS.—I used that expression.

Mr. LIGHTFOOT.—Q. There was a raft of surveyors used about [141—73] the time of the Mahele?

A. After the Mahele, when the kuleanas were being surveyed.

Q. That would mean that, say, from February the 14th, 1846, up to the sixties?

A. And particularly, say, when the land—when the kuleanas were being surveyed. Not so much to

(Testimony of Joseph S. Emerson.)

larger lands. The—Judge Lee and Judge Robertson, the father of the present Judge, and those who were seeking to get the land into the hands of the Hawaiian people before the death of those who were in favor of it, and before, for instance, Kamehameha Fifth should get in, they were earnest in their efforts to get the land surveyed. They got anybody that called himself a surveyor—

Q. That's right—

A. Anybody that called himself a surveyor. Some of these surveyors were entirely ignorant of surveying, and some knew more about it.

Q. I see.

A. It was a piece of work humanitarian in its object to get the land into their hands just as soon as possible. Consequently I used that word "raft" in that way as indicating that they secured a large number, some of whom were qualified and some were entirely unqualified.

Q. Yes, that's right; that's what— Then, by the use of the word "raft" of surveyors you not only mean to testify that there were a good number of surveyors, but they were not surveyors who were—who had professional training? A. Yes.

Q. As a matter of fact, there were quite a number of young men came from—let me see—Lahainaluna, was that turning out surveyors then?

A. Yes. It was more in particular in reference to absolute [142—74] ignorance of some of Hawaiian matters at all. Those that came from Lahainaluna, as a rule, showed considerable pains in their work.

(Testimony of Joseph S. Emerson.)

I have known Kalama and Ua and various others there, their testimony goes to some pains, but when you take some of those people who didn't know anything of those things it was very much the reverse.

Q. Yes, I see, but it was a question almost of "any port in a storm," to get any man to make a survey, whether he was thoroughly competent or not?

A. Yes.

The COURT.—How does it help us with the boundaries?

Mr. LIGHTFOOT.—We wish to show, may it please the Court, that when a man used—that when these surveyors used the words "konohiki" or "ke aupuni," they were not always clever enough to know what their words actually imported.

Mr. ROBERTSON.—Why doesn't counsel ask the witness in reference to the surveyor who surveyed this kuleano, then?

(Argument.)

Mr. LIGHTFOOT.—I want to show that the class of men that were employed generally for that work at that time were as the professor says.

Mr. ROBERTSON.—I move if the Court please, to strike out all questions and answers in this connection with reference to the incompetency of certain surveyors who did survey work in the early days here without reference to any survey that is in evidence in this case. It is absolutely unfair to put into evidence here a general statement that a whole raft of incompetent surveyors were employed to

(Testimony of Joseph S. Emerson.)

make surveys of kuleanas.

(Argument.)

The COURT.—The motion to strike out will be granted. It [143—75] is stricken out accordingly.

Mr. LIGHTFOOT.—Q. Do you know J. Fuller?

A. I do.

Q. Did you know J. Fuller? A. Yes.

Q. What would you say of his ability?

A. I should say that, having gone through scores of his surveys, I consider him the very best surveyor of the time; even C. J. Lyons, who commenced work at sixteen years old, don't rank—as a youth; he made a very fine surveyor,—but at the time when that man Fuller, ranked even higher than C. J. Lyons, and that is the highest praise I can give any surveyor in the Hawaiian Islands.

Mr. ROBERTSON.—You contend Fuller made this survey, do you, Mr. Lightfoot?

Mr. LIGHTFOOT.—No.

The WITNESS.—Mr. Fuller was editor of a Hawaiian newspaper—

Mr. ROBERTSON.—Mr. Kanakanui was bowing his head and saying yes, and you say, no.

Mr. LIGHTFOOT.—Mr. Kanakanui said, “I think by Fuller.” I haven’t any knowledge if it.

Mr. ROBERTSON.—Kanakanui said yes, Fuller did make the survey.

(Testimony of Joseph S. Emerson.)

Mr. LIGHTFOOT.—Now, knowing that it is true, we will admit it.

Mr. ROBERTSON.—Let's play fair here.

Mr. LIGHTFOOT.—We are playing fair. It was made by Fuller.

The WITNESS.—Mr. Fuller was editor of a Hawaiian newspaper sometime during his life, and, as a surveyor, I have been over scores of his surveys and I unequivocally say that I rank him as the best surveyor in the Hawaiian Islands at that time [144—76] when he was surveying.

The COURT.—Now do I understand that this land in question was surveyed by him?

Mr. ROBERTSON.—The kuleana within the—

Mr. LIGHTFOOT.—The kuleana within Kioloku was made by him. That's all, Mr. Emerson.

Redirect Examination by Mr. ROBERTSON.

Q. Just a minute. You have been examined on cross-examination here at great length, Mr. Emerson; is there anything, any answer you may have given on cross-examination that was intended to qualify the statement previously made by you that the word "konohiki," as designating a class of land, could not properly be used as designating Government land?

Mr. LIGHTFOOT.—I object to that. That is not proper redirect.

The COURT.—Objection is overruled.

The WITNESS.—Shall I answer that question?

The COURT.—You may answer the question.

(Question read by reporter.)

(Testimony of Joseph S. Emerson.)

A. I think I have no change to make there. The statement is— The idea that I wished to convey was that there was Government land it was used—the term aupuni was used, and that I always understood konohiki to mean other ownership than aupuni. I still stand by that statement.

Mr. ROBERTSON.—Q. Yes; in other words, the word aupuni on one side and the word konohiki on the other side were terms used to differentiate between two different classes of land?

A. That's the way I understood it. [145—77]

Q. Yes. Now, by way of illustration, Mr. Emerson, as shown by this map here, lying on the north side of the land of Kioloku is the Ahupuaa of Honuapo, awarded by Land Commission Award 8559B, Apana 13, to W. C. Lunalilo. Is it not a fact that, upon that award to Lunalilo, Lunalilo would thereby become and be properly designated as the konohiki of Honuapo?

A. According to usage.

Mr. LIGHTFOOT.—We object to this as not proper redirect.

The COURT.—Objection is overruled.

Mr. ROBERTSON.—Q. In other words, that, whereas, prior to the mahele, the word “konohiki” had been used to designate the man in charge of a certain land, after the mahele and the award of private titles, the word then was used to designate the awardee of the ahupuaa, is that not right?

A. It was used to designate the man who owned

(Testimony of Joseph S. Emerson.)

it, whether it came by purchase or by award—by the mahele.

Q. At any rate the land which had—the title of which had come into private ownership?

A. Yes.

Q. Mr. Lightfoot showed you that pamphlet of C. J. Lyons on the subject and referred you to a passage in it. As I understand that passage, and I think you said, but I am not sure, the statement of Mr. Lyons there was with particular reference to the ownership of ilis, was it not?

A. I believe so.

Q. And Mr. Lyons in that paragraph discusses somewhat the difference between a plain ili and an ili kupono? A. Yes.

Mr. ROBERTSON.—That's all.

Mr. LIGHTFOOT.—That's all. [146—78]

Testimony of George F. Wright, for Respondent (Recalled).

GEORGE F. WRIGHT, a witness on behalf of contestant or respondent, being recalled for cross-examination, testified as follows:

Cross-examination.

(By Mr. LIGHTFOOT.)

Q. In your examination of Hawaiian surveys, Mr. Wright, you have stated on your direct examination that you have found the word "konohiki" to represent private ownership? A. I did.

Q. Have you ever, in your examination of old surveys, found the word "konohiki" used as a

(Testimony of George F. Wright.)

boundary where the boundary was not on privately owned lands? A. I have.

Q. On one occasion or many occasions?

A. On many occasions.

Q. And referring both to crown lands and Government lands? A. Yes, sir.

The COURT.—Q. That is, if a kuleana was situated within any crown lands or Government lands, its boundaries would be designated as "konohiki"?

A. There are cases.

Q. There are cases?

A. There are cases.

Mr. LIGHTFOOT.—Q. Are you familiar with the Ahupuaa of Waiohinu? A. I am.

Q. What is that? A. Crown land.

Q. Crown land. Do you know if there are any surveys made of [147—79] kuleanas within Waiohinu which give their boundaries on the Ahupuaa of Waiohinu as "konohiki." A. I do.

Q. Are there? A. There are.

Q. There are? Do you know the land of Puueo?

A. That is—

Mr. ROBERTSON.—Objected to as irrelevant and immaterial, and not proper cross-examination.

The COURT.—I presume this is preliminary to showing they are situated within?

Mr. LIGHTFOOT.—Yes.

Mr. ROBERTSON.—Puueo is that land which counsel attempted to cross-examine Mr. Emerson on which the Court has stricken out.

(Argument.)

(Testimony of George F. Wright.)

The COURT.—I think the objection is well taken.

(Objection sustained.)

Mr. LIGHTFOOT.—That's all, Mr. Wright, thank you.

The COURT.—Understand me, I am not ruling that you may not show these through him, but I say that is a possibility that may be a part of your case.

Mr. LIGHTFOOT.—I understand the ruling.

Redirect Examination by Mr. ROBERTSON.

Q. You say that the Ahupuaa of Waiohinu was a crown land? A. It is.

Q. Crown lands at the time of the Mahele were denominated the private lands of the king, were they not? A. They were [148—80]

Q. Yes, and were so treated? A. They were.

Q. Yes. In other words, that crown land ahupuaas had their boundaries settled in the same way that konohiki ahupuaas were settled?

A. They were.

Q. —were they not? Yes. And so that, as a matter of fact this Ahupuaa of Waiohinu, which you say is a crown land, did have its boundaries settled by the Commissioner of boundaries for that circuit just as the boundaries of Kioloku were settled before the commission?

A. The same thing.

Q. Yes. This is not true as to Government land?

A. Not in this district.

Q. Yes. Now you have said that you have seen cases where kuleanas within Government ahupuaas

(Testimony of George F. Wright.)

have had their boundaries designated as running along konohiki? A. I have.

Q. In those cases did you make any particular investigation as to the history of the ahupuaa to ascertain whether at some time or other there had been any question as to whether they were Government or konohiki ahupuaas?

A. The only way I can explain it, that previous to the Mahele all lands were practically konohiki and after the Mahele in 1847 it was not a matter of general knowledge as to what lands had been konohiki or what, so that the term was used, Land Commission Award—not knowing that the title had passed to the Government.

Q. That would be so where a surveyor was not well posted? A. It would.

Q. Or it would also be so if the surveyor had made an honest [149—81] mistake?

A. It would.

Q. Do you still adhere to your former statement that the term "konohiki" is not properly or correctly used with reference to Government land?

A. I do.

Mr. ROBERTSON.—That's all.

Mr. LIGHTFOOT.—There is one question that I omitted to ask on cross-examination that I desire—

The COURT.—Very well.

Mr. LIGHTFOOT.—Q. Showing you the map that you last referred to yesterday afternoon, being a Government registered map, 1455, which was

spread out on the desk, I will ask you how that land was classified; how the land of Kioloku is classified on this map?

Mr. ROBERTSON.—We object to that as irrelevant and immaterial. The map is not in evidence. I obtained permission to use the map simply so that the witness would have a map large enough to show the boundaries of Waiohinu in reference to these boundaries he was then testifying about.

The COURT.—That is the way I understood it, that this was not evidence but merely as Judge Robertson said.

Mr. LIGHTFOOT.—If that is correct then I will put this in another way.

Afternoon Session, Oct. 25, 1918.

Mr. ROBERTSON.—If the Court please, the Territory has produced, pursuant to my request made in open court the other day, a map of a section of the district of Kau on the Island of [150—82] Hawaii, showing ahupuaas, grants and unsold Government lands, compiled by F. S. Lyman in 1879, being a registered map in the archives of the survey department, numbered 575. It was my intention, and is my intention, to offer this map in evidence, provided the Court will take my view of a certain phase of it that I will now mention. This map shows a number of lands in that section of the Territory, including the land in dispute, Kioloku, and the adjoining and neighboring lands. Certain of these adjoining lands, take, for instance, the land of Hionaa, is designated on the map by the

maker of it as Aupuni or Government land. The designations of the Ahupuaas of Honuapo and Kioloku are not designated Government, this indicating private ownership, but someone has made a pencil notation, or some persons have made a number of pencil notations, on the face of this map, the notation on Kioloku being "834" acres. Of course no point is made about the area, but it is also noted here that "No Title" in lead pencil. Now, then, what that means is, perhaps, open to argument. It may mean that the Government has no title, or it may mean that the private claimant as of that date had no title; we don't know; but what we object to is the map going in as evidence with these pencil notations as a part of it. In other words, I contend I am entitled to offer in evidence this map made by Mr. Lyman in 1879, for the purpose of designating Government lands in this section of the country, as he made it and as it was filed and registered under its appropriate number. I contend that this map supports our contention in this case and I submit that our right to use it as evidence for our benefit in this case should not be defeated or impaired by virtue of the fact that somebody has made an unauthorized pencil memorandum on the face of it.

The COURT.—It is not signed or initialed by any person? [151—83]

Mr. ROBERTSON.—No, your Honor. There are a number of such notations in various parts of the map. I am not particularly interested in any

of them except the notation of the reference to the land in dispute; and I contend, therefore, that I am entitled to offer this map in evidence without it being regarded as a part of the map, this pencil notation on it.

Mr. LIGHTFOOT.—I submit, may it please the Court, that, in the absence of a showing that there has been a malicious mutilation of the map, the map should go in as it is, it being for either party to rely upon the map as it is. I don't know—Counsel is taking it for granted that that pencil memorandum is not part of the map as originally registered.

(Argument.)

We object to any exclusion of anything that appears on the face of the map.

(Argument.)

The COURT.—Well, I will admit the map. It seems to me clearly it was no part of the map at the time the map was made and finished.

Mr. LIGHTFOOT.—As long as the map goes in as it is, we have no objection.

Mr. ROBERTSON.—Well, you see, there is a ground of misunderstanding right there. We are not asking that the Government be compelled to erase this pencil memorandum, but I think we are entitled to the specific ruling from the Court that we are entitled to introduce this map as an exhibit and that the pencil memorandum appearing on it shall not be considered as a part of the exhibit.

The COURT.—With reference to the state of title at the time it was made?

Mr. ROBERTSON.—Oh, with reference to anything. [152—84]

(Argument.)

The COURT.—If your purpose is to show the condition of the title of the land at the time the map was made, the pencil memorandum is no part, and the mere making of the pencil memorandum shows it was subsequent to the completion of the map, because if it was intended that that be a part of the map it would have been made just the same as the other portion of the map; therefore, it follows, as a matter of reasoning, it seems to me, that it is clearly not a part of the map at the time the map was finished. That pencil memorandum would not change things as they existed at the time the map was made.

Mr. ROBERTSON.—Well, I—I think I understand your Honor, then.

The COURT.—As I understand, that is how you are trying to show the condition of things as they existed there in 1879, at the time the map was made?

Mr. ROBERTSON.—Yes. Well, on that understanding, then, I offer this map in evidence.

Mr. LIGHTFOOT.—We have no objection.

(Respondent's exhibit 10.)

Mr. ROBERTSON.—If the Court please, we offer in evidence a certified copy of a deed of trust executed by K. Kapaakea and A. Keohokalole, his wife, to Charles R. Bishop, dated June 14th, 1860, recorded in registry of conveyance at Honolulu, in Book 13, pages 59 to 61.

(Testimony of Robert Parker, Jr.)

(Received in evidence and marked Respondent's Exhibit 11.) [153—85]

Testimony of Robert Parker, Jr., for Respondent.

ROBERT PARKER, Jr., a witness called on behalf of respondent, being first duly sworn, testified as follows:

Direct Examination by Mr. ROBERTSON.

Q. What is your name? A. Robert Parker, Jr.

Q. Where do you live? 889 Kanoa Street.

Q. Honolulu? A. Yes, sir.

Q. What is your position?

A. Assistant clerk of the Supreme Court.

Q. Of this Territory? A. Yes, sir.

Q. Have you brought with you, under subpoena, from the records of the Supreme Court, probate record No. 1839? A. Yes, sir.

Q. Have you it with you? A. Yes, sir.

Mr. ROBERTSON.—Now, Mr. Lightfoot; unless this whole mass of stuff is going in, we better get together on such portions of it—

Mr. LIGHTFOOT.—Will you state, Judge, what you want; wouldn't the best way—I make this suggestion, that counsel will state what he wishes to prove from these records, quoting them, if necessary, and I will state what I wish to prove from the records. Of course, I rely on those records; and we can let the thing go in without the records, as it seems to me.

Mr. ROBERTSON.—I think we can get at it that way. It has been the purpose of both counsel

here not to fill up the record here with a lot of chaff. [154—86]

The COURT.—I understand these to be photographic copies, certified copies?

Mr. ROBERTSON.—Photographic, yes.

Mr. LIGHTFOOT.—These are receivable in evidence under the statute.

The COURT.—Yes.

Mr. ROBERTSON.—I want to show by this record that Kapaakea, who was sometimes called Caesar Kapaakea, but in Hawaiian his initial is K, there being no C. in the Hawaiian language,—C. or K. Kapaakea died on the 13th of November, 1866, intestate.

Mr. LIGHTFOOT.—That is admitted.

Mr. ROBERTSON.—That J. O. Dominis and Annie Keohokalole, the decedent's widow, were appointed administrator and administratrix of the estate.

Mr. LIGHTFOOT.—That is admitted.

Mr. ROBERTSON.—On January 19th, 1867.

Mr. LIGHTFOOT.—That is admitted.

Mr. ROBERTSON.—That is the date shown in the record.

Mr. LIGHTFOOT.—Yes, that's admitted.

Mr. ROBERTSON.—That before the administration of the estate was closed, Annie Keohokalole died, the date of her death being April 6th, 1867.

Mr. LIGHTFOOT.—April 6th, 1869. May we verify that? I may be in error.

Mr. ROBERTSON.—Sixth day of April, 1869.

Mr. LIGHTFOOT.—We will admit that she died on that date.

Mr. ROBERTSON.—And that J. O. Dominis was appointed administrator of her estate on the 27th of May, 1869.

Mr. LIGHTFOOT.—Yes, we admit that.

Mr. ROBERTSON.—That J. O. Dominis, as such administrator, on [155—87] the 13th of September, 1870, filed his final account and petition for discharge as such administrator.

Mr. LIGHTFOOT.—Petition of Dominis for discharge—I haven't got that date, but what date do you give?

Mr. ROBERTSON.—My memorandum says September 13th, 1870.

Mr. LIGHTFOOT.—We will also admit.

The COURT.—If the date is not material, why—

Mr. LIGHTFOOT.—It has some bearing on it, but we will admit it. I know it was about that time.

Mr. ROBERTSON.—That the petition alleged, *inter alia*, that all the real estate remaining and to which the heirs of the deceased were entitled has been partitioned by the heirs of the deceased and the deed of partition duly recorded in the office of the Registrar of Conveyances.

Mr. LIGHTFOOT.—That is admitted.

Mr. ROBERTSON.—And that the order of Court approving the accounts and granting the discharge makes similar reference to the partition of the real estate among the heirs of A. Keohokalole.

Mr. LIGHTFOOT.—It is so admitted, your Honor.

Mr. ROBERTSON.—That the account of J. O. Dominis as administrator shows, as the first item of receipt of money, receipt of a balance of an account from C. R. Bishop, trustee, of \$226.14, being the balance remaining in the hands of Bishop as such trustee. On June 5th, 1869. That is admitted, isn't it?

Mr. LIGHTFOOT.—That is admitted.

Mr. ROBERTSON.—That the account of Charles R. Bishop, trustee of the estates of Kapaakea and Keohokalole are a part of the record in the probate court.

Mr. LIGHTFOOT.—They were filed there; I don't know that [156—88] there was any order receiving them in evidence, but they were filed with the papers and are among the records. We will so admit.

The COURT.—That will make it a part of the record, won't it?

Mr. LIGHTFOOT.—A part of the record.

Mr. ROBERTSON.—That is satisfactory.

Mr. LIGHTFOOT.—I don't know if they have the filing mark, but they are with the papers.

Mr. ROBERTSON.—Yes. Well, if there is any question about it, I submit they are connected up with the amount shown by the administrator as being the balance received by him, which corresponds with the balance shown by Bishop's account, showing it is the account or goes to make up the balance that he turned over to the administrator.

The COURT.—It seems to me that would be sufficiently clear.

Mr. ROBERTSON.—Perfectly clear to me. I don't know what's the matter.

Mr. LIGHTFOOT.—There is the indorsement at the end of the Bishop account, as I remember it, "C. R. Bishop account as trustee of the estate of"—There is no filing mark of the Court.

The COURT.—Q. Well, this photograph doesn't show the filing mark, does it? A. Yes, sir.

Mr. LIGHTFOOT.—We admit that it is in—among the records of the case.

Mr. ROBERTSON.—That Mr. Bishop's account shows, under date of April 9, 1861, the receipt from W—the receipt from Thomas Martin for one year's rent for Kioloku, Kau, Hawaii, fifteen dollars.

Mr. LIGHTFOOT.—It is so admitted. [157—89]

Mr. ROBERTSON.—The same account shows, under date of January 25th, 1862, receipt of rent from—no, the receipt from W. T. Martin for six months' rent of Kioloku to December first, 1861, ten dollars.

Mr. LIGHTFOOT.—So admitted.

Mr. ROBERTSON.—The same account shows, under date of July 8, 1862, the receipt from W. T. Martin for six months' rent to June first for Kioloku, ten dollars.

Mr. LIGHTFOOT.—To June first of what year?

Mr. ROBERTSON.—Doesn't state. Admitted?

Mr. LIGHTFOOT.—Yes, that is admitted.

Mr. ROBERTSON.—The same account shows, under date of November 26th, 1862, the receipt

from cash—receipt from W. T. Martin for six months' rent to December first—62, for Kioloku, ten dollars.

Mr. LIGHTFOOT.—Admitted.

Mr. ROBERTSON.—That the same account shows, under date of July 2, 1863, the receipt from W. T. Martin six months' rent to June first for Kioloku, ten dollars.

Mr. LIGHTFOOT.—Admitted.

Mr. ROBERTSON.—The same account shows, under date of November 5, 1863, receipt from W. T. Martin, six months' rent to December 1—63, for Kioloku, ten dollars.

Mr. LIGHTFOOT.—Admitted.

Mr. ROBERTSON.—The same account shows, under date of June 11, 1864, the receipt from W. T. Martin, rent of Kioloku six months to first inst. ten dollars.

Mr. LIGHTFOOT.—Admitted.

Mr. ROBERTSON.—That the same account shows, under date of November 21, 1864, receipt from W. Thomas Martin rent for Kioloku six months to December 1—64, ten dollars. [158—90]

Mr. LIGHTFOOT.—Admitted.

Mr. ROBERTSON.—That the same account shows, under date of July 22, 1864, receipt from W. T. Martin, rent Kioloku six months to June first ten dollars.

Mr. LIGHTFOOT.—Admitted.

Mr. ROBERTSON.—Same account shows, under date of February 8, 1865, receipt from W. Thomas

Martin rent Kioloku six months to December 1—65, ten dollars.

Mr. LIGHTFOOT.—Admitted.

Mr. ROBERTSON.—That the same account shows, under date of August 20, 1866—I am wrong there. Last one in 1864, Nov. 21, 1864, July 22, 1865, ten dollars.

Mr. LIGHTFOOT.—That's right.

Mr. ROBERTSON.—February 8th, 1866, it should be, ten dollars. That is to December 1st, 1865. Then August 20th, 1866, receipt from W. Thomas Martin rent of Kioloku six months to first June, ten dollars. Admitted?

Mr. LIGHTFOOT.—Admitted.

The COURT.—Is this for the entire piece or just a portion of it, or does it appear?

Mr. ROBERTSON.—Kioloku means the whole if it means anything. Under date of December 27, 1866, receipt from W. T. Martin, rent Kioloku, six months to December 1—66, ten dollars.

Mr. LIGHTFOOT.—Admitted.

Mr. ROBERTSON.—Under date of July 8, 1867, receipt from W. T. Martin, rent of Kioloku, six months to June first, ten dollars.

Mr. LIGHTFOOT.—Admitted.

Mr. ROBERTSON.—Under date of January 21, 1868, receipt from W. T. Martin, rent of Kioloku six months to December 1—68, ten dollars. [159—91]

Mr. LIGHTFOOT.—Admitted.

Mr. ROBERTSON.—Under date of January 11, 1869, the receipt from W. T. Martin, rent of Kio-

loku, one year to December 1—68, twenty dollars.

Mr. LIGHTFOOT.—Admitted.

Mr. ROBERTSON.—That the final account of J. O. Dominis, administrator of the estate of Annie Keohokalole shows, *inter alia*, the receipt, under date of January 19th, 1869, from T. Martin ten dollars, and on March 19th—I can't make that date out—ten dollars—I will lump those two together, if you like. The accounts of J. O. Dominis, as administrator, show the receipt of two payments from T. Martin of ten dollars each, without specifying what it was for.

Mr. LIGHTFOOT.—That is admitted.

Mr. ROBERTSON.—Which I contend is inferentially for six months each.

I think that's all I have to show by this witness. Have you anything, Mr. Lightfoot, while the record is here?

Mr. LIGHTFOOT.—Yes. May I have the record, please?

We wish to show that on the proceedings for the appointment of an administrator of the estate of Caesar Kapaakea, deceased A. F. Judd testified that he knew the deceased and that he owned a small piece of land at Makiki, three or four acres, which was incumbered, and there was not enough money—not enough property to pay his debts. Is that admitted?

Mr. ROBERTSON.—I admit the fact but dispute its relevancy.

Mr. LIGHTFOOT.—As long as you admit the fact—I haven't disputed the relevancy of any of

these other matters. I don't know whether that comes within our—quite within our agreement—whether I haven't "bought a pig in a poke" I thought were going to rely upon *that* we found in the [160—92] record and let it go in. I might have disputed the relevancy of several little things that you read there.

Mr. ROBERTSON.—Well, we are not claiming under Kapaakea.

Mr. LIGHTFOOT.—May we have that admission in evidence, that "We are not claiming under Kapaakea," because that will further clear up the situation. I take it you are claiming solely under Annie Keohoklole?

The COURT.—Then that would not be pertinent.

Mr. LIGHTFOOT.—Then it won't be pertinent. Well, it might be, your Honor, on the theory that Kapaakea died—had died seized of Kioloku and had devised to Annie, his wife.

The COURT.—But what about the admission?

Mr. LIGHTFOOT.—The admission is that they do not claim through Kapaakea.

The petition for—of J. O. Dominis for letters of administration on the estate of Annie Keohokalole, deceased, sets forth that the value of the property of which she died possessed is about three thousand dollars. Is that admitted?

Mr. ROBERTSON.—The statement is that "the estate of said deceased, so far as I have been able to ascertain the same, is of about the value of three thousand dollars." We admit that.

Mr. LIGHTFOOT.—That subsequently J. O.

Dominis was appointed administrator.

Mr. ROBERTSON.—That is already in.

Mr. LIGHTFOOT.—That is admitted. Under a bond of a thousand dollars—I don't know if that is material. That J. O. Dominis petitioned to sell the real estate and in his petition alleged that there were claims against the estate of about fifteen hundred dollars and there was not sufficient personal estate and it became necessary—it becomes necessary— [161—93] to sell the whole or some part of the real estate for the payment of debts.

Mr. ROBERTSON.—Yes, we admit that.

Mr. LIGHTFOOT.—That he was thereupon, after proper proceedings, licensed to sell the real estate.

Mr. ROBERTSON.—No, no—

Mr. LIGHTFOOT.—To sell certain real estate, enumerated.

Mr. ROBERTSON.—To sell two pieces of real estate.

Mr. LIGHTFOOT.—Two pieces of real estate, the Ahupuaa of Honohina and the Ahupuaa of Kauwela. Honohina in Hilo and the Ahupuaa of Kauwela in Kau.

Mr. ROBERTSON.—Yes, we admit that he was authorized to sell those two pieces.

Mr. LIGHTFOOT.—That the Ahupuaa of Honohina was sold to Stanley for six hundred dollars—

Mr. ROBERTSON.—We submit that is immaterial and irrelevant.

Mr. LIGHTFOOT.—It is not very material.

That Kauwela was sold to Wilcox for seven hundred and twenty-five.

Mr. ROBERTSON.—Same objection.

The COURT.—That is immaterial. Sustained. It is immaterial. No reference to the land in question?

Mr. LIGHTFOOT.—No reference to the land in question.

Mr. ROBERTSON.—Except that it was included in the partition—

The COURT.—Oh, yes, but I mean in this license to sell.

Mr. ROBERTSON.—No.

Mr. LIGHTFOOT.—That the sale was confirmed.

Mr. ROBERTSON.—We admit that.

The COURT.—How is that material anyway?

Mr. ROBERTSON.—I don't know how it is material, your Honor, but I don't like to object to everything counsel proposes. [162—94]

Mr. LIGHTFOOT.—That the accounts of Bishop —C. R. Bishop, trustee, extend from 1860 to 1868, and the only reference to Kioloku are—references to Kioloku in those accounts are the receipts from Martin referred to and admitted.

Mr. ROBERTSON.—We admit that. '61 to '68, your Honor.

Mr. LIGHTFOOT.—That there are in the records of the estate of Kapaakea and Keohokalole any vouchers showing moneys paid for the estate and there is no voucher showing the payment of taxes for the land of Kioloku.

Mr. ROBERTSON.—That is admitted. That

Mr. Bishop's accounts from '61 to '68 do not show the expenditure of any money for Kioloku.

Mr. LIGHTFOOT.—I think that's all we desire to have admitted.

Mr. ROBERTSON.—That's all, Mr. Parker.

We offer in evidence now, if your Honor please, a certified copy of the partition deed made between John O. Dominis and Lydia K. Dominis, his wife, of the first part, Likelike of the second part, David Kalakaua and Kapiolani, his wife, of the third part and W. P. Keahoolewa by his guardian, Keelikolani, of the fourth part; dated July 3, 1870, recorded in the Registry of Conveyances in Honolulu in Book 30, pages 364 to 367.

Mr. LIGHTFOOT.—We object to that on the ground that it doesn't appear that the heirs of Annie Keohokalole had any interest in the land in question.

The COURT.—It will be admitted in evidence. Objection's overruled.

(Read.) (Exhibit 12.)

Mr. ROBERTSON.—Now, Mr. Lightfoot, I would like to fix the dates at which the change of ownerships and possessions occurred. I would like to get that from here. That is that David Kalakaua [163—95] *Kalakaua* conveyed to Obadiah Spencer the land in question by deed dated December 15, 1873—I understand, your Honor, that counsel make these admissions as I go on—that Kalakaua and Kapiolani, his wife, conveyed to O. B. Spencer, by deed dated December 15, 1873, recorded in Book 38, page 438—

Mr. LIGHTFOOT.—I shall have to make a little objection, may it please the Court. The way it is put there, counsel says Kalakaua and wife conveys to Spencer. Now, there was a difference between the wife and Kalakaua—The husband conveyed—The facts are, as I understand them and as they are admitted, that Kalakaua conveyed the land to a third party, conveyed the land to his wife Kapiolani by a mesne conveyance—

Mr. ROBERTSON.—They both executed this deed.

Mr. LIGHTFOOT.—I think it ought to appear in the record that Kalakaua had put title in this land in his wife.

The COURT.—At some time previous to this?

Mr. LIGHTFOOT.—At some time previous to this.

The COURT.—But they turned around and both signed a deed?

Mr. LIGHTFOOT.—Both signed a deed.

(Argument.)

I am willing to acknowledge that I don't see that it would have any particular bearing at this time but some question might arise.

(Argument.)

Well, if it becomes material hereafter in this hearing I will ask to make that correction.

The COURT.—Certainly, that will be granted.

Mr. ROBERTSON.—The next, that O. B. Spencer conveyed by deed to A. Hutchinson, dated May 12, 1874, recorded in Book 39, [164—96] page 323.

Next comes a deed from the executors of A. Hutchinson, deceased, by order of the probate court, conveying to Claus Spreckels and W. G. Irwin, trading together under the firm name of W. G. Irwin & Co., of Honolulu; dated February 28, 1881, recorded in Book 70, page 2.

Next comes a release of dower by Margaret A. Hutchinson, widow of A. Hutchinson, deceased, to Claus Spreckels of San Francisco of her dower right in the land in question. Dated April 30th, 1880, recorded in Book 65, page 78.

Then comes a deed—

The COURT.—I understand all these deeds specifically describe the land in question?

Mr. ROBERTSON.—Yes, your Honor, and in some cases other lands.

The COURT.—Yes.

Mr. ROBERTSON.—Next comes a deed executed by Claus Spreckels and W. G. Irwin, copartners under the firm name of W. G. Irwin & Co.—

The COURT.—Do their wives joint in that?

Mr. ROBERTSON.—No.

The COURT.—I think Mrs. Irwin is still alive.

Mr. ROBERTSON.—Partnership real estate. There was no dower. We are not worrying about those little things.

—John A. Buck of Hawaii, and John D. Spreckels, A. B. Spreckels and C. A. Spreckels, of San Francisco, partners under the firm name of J. D. Spreckels & Bros., purporting to convey the land in question to the Hutchinson Palantation Co., a Hawaiian corporation. Dated November 28th,

1884, recorded in the Registry of Conveyances in Honolulu, book 93, page 16.

The COURT.—I thought that earlier in the proceedings the Hutchinson Sugar Plantation Co. was described as San Francisco, California? [165—97]

Mr. ROBERTSON.—Yes, your Honor, we are gradually getting to that.

The next was a deed from the Hutchinson Sugar Plantation Co., a Hawaiian corporation, covering the land in question, to Louis Sloss of San Francisco, dated June 1, 1890, recorded in the Registry of Conveyances of Honolulu in Book 119, page 120.

And finally a deed from Louis Sloss of San Francisco to the Hutchinson Sugar Plantation Co., a California corporation, covering the land in question. Dated June 11, 1889. Recorded in the Registry of Conveyances, Honolulu, in Book 118, page 376.

The COURT.—Is this the same corporation?

Mr. ROBERTSON.—No, your Honor, Hutchinson Plantation Co., was a Hawaiian corporation; Hutchinson Sugar Plantation Co. is a California corporation.

Mr. LIGHTFOOT.—May it please the court, we are willing to admit those facts as alleged, stated by counsel, and at this time, to save time, we ask counsel to admit, on his part, that in none of these instruments, from the partition deed down, which have been mentioned, is there any description or any deraignment of title showing the land commission award or a royal patent or royal patent grant or any reference to the Mahele.

Mr. ROBERTSON.—That is, the land is simply mentioned by name.

Mr. LIGHTFOOT.—The land is simply mentioned by name, with no derivative title.

Mr. ROBERTSON.—We admit that. Probably you will also concede, Mr. Lightfoot, that as far as these deeds cover other lands the same is true; they do not purport to state their [166—98] derivation?

Mr. LIGHTFOOT.—I couldn't say that as I have not examined them with that end in view.

The COURT.—Well, isn't it immaterial whether it states the source of title or not?

(Argument.)

Mr. ROBERTSON.—The proposition was nowhere in these instruments that have just been referred to.

If you will admit that the Hutchinson Sugar Plantation, a California corporation, is authorized to do business in this Territory—?

Mr. LIGHTFOOT.—We will so admit, your Honor.

Mr. ROBERTSON.—Well, I think we rest, then.

Mr. LIGHTFOOT.—Call Mr. Wall.

Testimony of Walter E. Wall, for Petitioner (In Rebuttal).

WALTER E. WALL, a witness called on behalf of petitioner in rebuttal, being first duly sworn, testified as follows:

Direct examination by Mr. LIGHTFOOT.

Q. Your name is Walter A. Wall, and you are

(Testimony of Walter E. Wall.)

surveyor, Territorial Surveyor of the Territory of Hawaii? A. Walter E. Wall.

Q. Walter E. Wall, yes. Mr. Wall, how long have you held the office of Territorial Surveyor?

A. Since February 1st, 1901, with the exception of a period of two years, during which time I was assistant surveyor in charge of the office.

Q. Who was your immediate predecessor in office?

A. Professor W. D. Alexander. [167—99]

Q. At that time he was called Surveyor General, wasn't he? A. Surveyor General.

Q. When was the title of the office changed, by the Organic Act?

A. I would say that it was Surveyor General just prior to that. The title of the office was changed under the Organic Act from that of Surveyor General to Surveyor of the Territory.

Q. When did you first become connected with the Survey Office?

A. I think it was in the year 1890; 1890 or '91; 1890, I think.

Q. In what capacity? A. As a sub-assistant.

Q. And you have constantly been connected with the office since then?

A. With the office of the surveyor, yes, sir.

Q. I will ask you— You are in charge of all the maps and records of the Survey Office? A. Yes.

Q. Showing you the map with the pencil marking on it— Where is that, Mr. Wall? Referring to map of Kau, Hawaii, by F. S. Lyman, registered

(Testimony of Walter E. Wall.)

575, I will ask you to look at that map— (Referring to Exhibit No. 10.)—Have you examined— Does that map show the Ahupuaa of Kioloku?

A. Yes.

Q. Have you examined that portion of the map?

A. Yes.

Q. Is there on that map a pencil memorandum?

A. Yes.

Q. What does it say?

A. 834 acres, no title. [168—100]

Q. Do you know in whose handwriting that was made? A. Yes.

Q. Whose handwriting was it?

A. Professor W. D. Alexander's.

Q. Have you anything to—or do you know when that pencil memorandum was made on that map?

A. No.

Q. Can you tell whether or not it was made before you became the head of the office?

A. Yes, it must necessarily have been made before.

Q. It was made before that time. Have you any— Do you remember seeing that map at any time when that pencil mark wasn't there?

A. I have seen the map.

Q. Before the pencil mark was—

A. Before I was made surveyor of the Territory.

Q. No, but I say you have never seen the map at any time before the pencil mark was put on there?

A. No, I don't recollect having seen it before.

(Testimony of Walter E. Wall.)

Q. Can you account for the presence on that map of that pencil mark; how did it come to be there?

Mr. ROBERTSON.—I object to that as being a mere conclusion of the witness, irrelevant and immaterial.

The COURT.—At best, it would be merely an opinion, wouldn't it?

Mr. LIGHTFOOT.—I think that, as head of the survey department, his opinion would be receivable in evidence, would it not, in matters of public—

(Argument.)

I will withdraw the question.

Q. Mr. Wall, what is the custom of the survey department of [169—101] the Territory of Hawaii with regard to making annotations on maps; are such annotations made or not?

Mr. ROBERTSON.—I object to that as irrelevant and immaterial, what the custom is. It is certainly a sorry day for this Territory if it is the custom there to monkey with recorded maps.

(Argument.)

The COURT.—I think you either ought to withdraw your other question or—

Mr. LIGHTFOOT.—I did withdraw it.

Mr. ROBERTSON.—I object to this as absolutely irrelevant and immaterial what the custom is there.

(Argument.)

Mr. LIGHTFOOT.—I wish to show by this witness that proper changes are made in these registered maps from time to time, and they always have been made. Or, in other words, the registered maps

(Testimony of Walter E. Wall.)

are not things that are fixed and certain, like a deed or instrument that is recorded in the registry office, Oahu, but it is a thing of a progressive nature; that is, they are for the use of the public and kept up to date for public use.

(Argument.)

The COURT.—I think the objection is well taken. I will sustain the objection, because these records ought to be—we ought to be able to look to them as having value, and if they are subject to change by any person that sees fit to change them, no matter who the person may be or how much he may be convinced of the fact that the change would be a good thing, I think it is wrong. When the map is put in there we must assume the things existed in that condition at that time. I don't think the pencil marks ought to be [170—102] allowed. Objection sustained.

Mr. LIGHTFOOT.—Q. I call to your attention, Mr. Wall, registered Map No. 1409. Will you look at that map and find the Ahupuaa of Kioloku?

(Witness indicates.)

Q. Can you tell, Mr. Wall, from this map how that land is classified?

Mr. ROBERTSON.—One minute—

Mr. LIGHTFOOT.—Q. That is to say, is it classified in this map as Government land, crown land or konohiki land?

A. It is classified as Government land.

Q. What is the date of this map—Oh, 1885; that's correct, is it?

(Testimony of Walter E. Wall.)

A. September, 1885. That's correct.

Q. How do you tell that that is classified as Government land?

A. Government land shown in green.

Q. On this map?

A. Yes, in green. It is the practice to show them in green, and they are also numbered and referred to in other records, in which they are described as Government land.

Q. Showing you registered map numbered—

A. Kau, District, Hawaii.

Mr. LIGHTFOOT.—May I have that offered in evidence in the same way?

The WITNESS.—Two thousand feet to one inch. Compiled by J. F. Brown, September, 1885, principally from surveys by F. S. Lyman.

Mr. LIGHTFOOT.—May I have that—I offer that in evidence.

Mr. ROBERTSON.—We object to that, if the court please, on the ground that it simply shows the opinion of the man who compiled the map as to whether the land was Government or private, and that we have no opportunity of cross-examination on. [171-103]

The COURT.—I didn't catch that, the land. Does it cover the land in question?

Mr. LIGHTFOOT.—The land of Kioloku is shown there in green, this Government land. We ask that this be offered in evidence.

Mr. ROBERTSON.—It doesn't appear that this

(Testimony of Walter E. Wall.)

witness had anything to do with the making of that map.

The COURT.—Well, but it comes from an official source and made by Mr. Lyman, who was the surveyor at that time?

The WITNESS.—J. F. Brown, who was special assistant on that particular work.

The COURT.—It seems to me that has some pertinency.

Mr. ROBERTSON.—Exception.

The WITNESS.—It was his special duty.

(Petitioner's Exhibit —.)

Mr. LIGHTFOOT.—Q. I show you, Mr. Wall, registered map No. —.

A. Registered number 1455, pigeon hole 1452.

Mr. ROBERTSON.—What's that?

A. Registry number 1455.

Mr. LIGHTFOOT.—Q. 1455. That is a registered map? A. Registered map.

Q. Will you see if you can find the Ahupuaa of Kioloku on that map?

A. Yes.

Q. What color is the ahupuaa in that map,—sort of reddish brown? A. Reddish brown.

Q. Will you refer to the legend on the map to see how Kioloku is classified in that map?

A. Unassigned land.

Q. Classified as unassigned lands. I offer the map in evidence. [171A-104]

Mr. ROBERTSON.—We object to that. We object to the receipt of the map in evidence on the

(Testimony of Walter E. Wall.)

ground it is irrelevant and immaterial. It simply expresses the opinion of the compiler of the map and we have no opportunity to cross-examine him; it not appearing that this witness had anything to do with the making of the map.

The COURT.—As I understand, this is an official map, comes from the survey office. It will be admitted in evidence.

(Petitioner's Exhibit ——.)

The WITNESS.—The title of it "Map of a portion of Kau, Hawaii, from Kealakaa to Punaluu. Map and survey by M. D. Monsarrat, 1887. Scale 1,000 feet equals one inch."

Mr. ROBERTSON.—In other words, it doesn't purport to be a map of Kioloku, according to that statement. It doesn't purport to be a map of Kioloku?

A. It is a map of the district, showing the titles in that section, in the Kau District, between certain lands.

Q. 1887?

A. Dated 1887.

Mr. LIGHTFOOT.—I understand that is admitted?

The COURT.—Yes.

Mr. LIGHTFOOT.—Q. I show you, Mr. Wall, Government registered map number 1807 and ask you to see if you can find the Ahupuaa of Kioloku on that map. A. Yes, sir.

Q. What color is it designated?

A. In green.

(Testimony of Walter E. Wall.)

Q. What does the color green on that map signify?

A. Government land.

Q. That Kioloku is Government land? [172-105]

A. Kioloku is recognized—Kioloku is represented as Government land.

Q. Anything on the map that indicates that green is—Where is the original?

A. Map of Kau, Hawaii, from Punaluu to Kaalae. Surveyed by M. D. Monsarrat, J. S. Emerson and F. S. Lyman. Scale one to twenty-four thousand. Map by F. S. Dodge, 1894.

Mr. ROBERTSON.—Q. There is no key to the different colorings given, is there?

A. A key to the colors?

Q. Yes.

A. That is a standard color used by the office for all of its maps of that date, the green representing Government land.

Q. Well, the map that was last referred to didn't have Kioloku colored in green, did it.

A. That was the map of the private surveyor, Mr. Monsarrat, not prepared by the Government office.

Mr. LIGHTFOOT.—Q. I understand that all Government maps are colored green for Government lands?

A. The Government lands are designated in green.

Mr. LIGHTFOOT.—I offer this in evidence.

Mr. ROBERTSON.—I object to that, if the court please, on the ground it is irrelevant and immaterial; does not purport to be the work even of the man who made it there. The map was made by F. S. Dodge

and it shows on its face that it is simply compiled by him from surveys made by other persons, including Mr. Lyman who made the map of 1879, and shows Kioloku as private land.

(Argument.)

The COURT.—It comes from the survey office. We must depend [173–106] on maps that appear to be regularly made.

Mr. ROBERTSON.—Doesn't your Honor see the point? Here's a map compiled, not made from surveys but compiled by F. S. Dodge from certain other maps, including the map of F. S. Lyman of 1879. Lyman's map shows that Kioloku was private land, and yet F. S. Dodge, who purports to make another map sometime in the eighties, compiles from that very map of Lyman's and represents Kioloku as being Government land. How can that stand?

The COURT.—I think that would perhaps go to the weight of it but I think it is admissible. I will admit it in evidence. I think it is admissible. Now it is four o'clock.

(Further hearing continued until nine o'clock tomorrow morning). [174–107]

Territory of Hawaii Land Court.

PETITION No. 283.

In the Matter of the Petition of THE TERRITORY OF HAWAII to Register and Confirm Its Title to the AHUPUAA OF KIOLOKU, in the District of Kau, Island and County of Hawaii, Territory of Hawaii.

Oct. 26, 1918.

Mr. LIGHTFOOT.—Let it appear of record that this is by request of both parties and that we have no claim that this is *dies non juris*.

Mr. ROBERTSON.—Yes.

The COURT.—Both parties request the court to sit today and hear this matter?

Mr. ROBERTSON.—Yes, your Honor.

The COURT.—Let the record show that.

WALTER E. WALL, being recalled for further examination testified as follows:

Mr. LIGHTFOOT.—Q. Mr. Wall, you yesterday, prior to adjournment, had testified as to the custom of the survey department that, in all maps by the department, Government land is colored green. Is there any rule as to the coloring of Crown lands?

A. Crown lands were designated in yellow. [175-108]

Q. In yellow, and that is a custom that has been followed how long?

A. Ever since I entered the office in 1890 and, I think, prior to that.

Q. Prior to that. Mr. Wall, referring to the term "konohiki"; there is a kuleana within the Ahupuaa of Kioloku, Land Commission Award 9659 to Kekahuna, survey made 1852, in which the boundaries on the four sides of the kuleana are given as "Konohiki." What have you to say with regard to the value to be placed upon the use of the term "Konohiki" in such cases?

Mr. ROBERTSON.—We object to the question

(Testimony of Walter E. Wall.)

on the ground no foundation has been laid for it, as to the competency of the witness—

The COURT.—That seems to be correct.

Mr. LIGHTFOOT.—I will withdraw the question.

Q. You say you became connected with the survey department in what year?

A. I entered the survey department in 1890.

Q. 1890. A. Yes, 1889 or 1890.

Q. Eighteen years ago—Twenty-eight years?

A. Twenty-eight years.

Q. Twenty-eight years, and during that time state whether or not you have examined very many surveys of lands in the Hawaiian Islands?

A. I have.

Q. State whether or not, during that 28 years' experience, you have studied the descriptions of boundaries in such grants and awards? [176-109]

A. Yes.

Q. Constantly?

A. Part of the regular work, yes.

Q. Part of the regular work of the department.

A. Yes.

Q. Now will you state what value is to be placed on the use of the word "Konohiki" as a boundary as to a survey made in 1852?

A. The term "Konohiki" might be applied in perhaps more than one way. In general, from a knowledge, a general knowledge of the use to which it has been put, I would be disposed to think that it was a convenient term used by surveyors, who were indifferent to an extent as to the actual ownership but

(Testimony of Walter E. Wall.)

realizing that it belonged to other parties—

The COURT.—Q. Other parties?

A. To other parties, and not knowing the owner in reality, they would refer to it as "Konohiki." For instance, the konohiki of a land is the agent, the head of the ahupuaa, the agent in charge of the land. And a surveyor—it is enough for him to know that it was along somebody else's land and in kuleanas, in particular, that was a very common reference, is found describing kuleanas and the various classes of land, Crown land, lands of the chiefs and the lands of the Government.

Q. Land of the Government, you refer to?

A. I say it is very commonly used. It was a convenient term to apply as of belonging to someone other than the owner of the land being described.

Q. I didn't quite understand you. You mean he would use the term konohiki if the surrounding land belongs to the Government [177-110] the same as he would if it belonged to a private individual?

A. It is frequently used. It was used, for instance—Now let me see, if the term konohiki was used in a survey prior to the date of the division or Mahele, that might properly apply to a konohiki land or to the konohiki, the agent in charge of it.

Q. That would be prior to 1852, though, wouldn't it? A. Now then, if a surveyor—

Q. Referring to the time prior to 1852, you say?

A. Prior to 1848.

Q. Yes.

A. Prior to 1848. Now, if a surveyor refers sub-

(Testimony of Walter E. Wall.)

sequently to that it depends on his knowledge as to the ownership. If he was a painstaking man who had full knowledge of the ownership, did it knowingly, why the konohiki would refer to the occupier or possessor of the land at the time.

Q. And would it mean private ownership?

A. Well, it might be a Crown land or it might be one of the konohiki lands. By konohiki land I would mean a land that was in the possession of a high chief and continued in his possession, perhaps, until title was acquired.

Mr. LIGHTFOOT.—Q. Have you in mind any specific occasion in which the term "Konohiki" was used in a survey as a boundary when it was a boundary between the land surveyed and either Government land or Crown land?

Mr. ROBERTSON.—If the court please, we object to the question on the ground that it is irrelevant and immaterial unless it be limited to the land in dispute.

· (Argument.)

The COURT.—You haven't yet asked him even the general [178-111] question as to what the custom is. I think it would be well to ask him and then, possibly, as to this other phase of the matter which, of course, I have not ruled upon now.

Mr. LIGHTFOOT.—Put it in that way. Mr. Wall—

The COURT.—Withdrawing the other question?

Mr. LIGHTFOOT.—Withdrawing the other question.

(Testimony of Walter E. Wall.)

Q. Prior to the Mahele, say, what was the custom in describing boundaries between private lands and—Well, that question is stupid, of course—

The COURT.—Weren't any private lands.

Mr. LIGHTFOOT.—I shall have to withdraw that question.

The COURT.—Yes.

Mr. LIGHTFOOT.—We will get there by and by.

Q. Prior to the Mahele what was the custom of surveyors in describing the boundaries of lands as to the use of the words "Konohiki," "Aupuni" or "Lei Alii"? I suppose the question might arise were there any kuleanas prior to the Mahele.

Mr. ROBERTSON.—I submit the question is unintelligible. It was the Mahele that created the distinction and made the classification.

(Argument.)

Mr. LIGHTFOOT.—Q. Were there surveys of lands prior to the Mahele?

A. Yes.

Q. That you know of? A. Yes.

The COURT.—Q. And maps made of those surveys prior to the Mahele?

A. There were surveys and sketch plans; not comprehensive; [179-112] district maps showing lands.

Q. Just a sketch of the individual piece of land.

Mr. ROBERTSON.—Simply town lots, weren't they?

A. Yes. Anybody speaking of "surveys," kono-hiki surveys as a general rule—

(Testimony of Walter E. Wall.)

Mr. LIGHTFOOT.—Q. And what was the custom as to the boundaries of those lands in those ancient surveys?

A. Well, my understanding of the matter is that, prior to the Mahele, the larger ahupuaas were very strictly konohiki lands. They were held by the higher chiefs, under the king, who really owned or controlled all the lands. The chiefs under him were the agents on the konohiki property, and under them descriptions—those smaller lands refer to them as abutting along konohiki. That's the way the term came to be applied.

The COURT.—There is no evidence of anyone as yet that shows the date of the survey of the land in question, Kioloku, the boundaries of that?

Mr. ROBERTSON.—1874. It is in evidence.

Mr. LIGHTFOOT.—Shortly after Kalakakaua had come to the throne.

The COURT.—Yes. Well, it had an existence by name prior to that?

Mr. LIGHTFOOT.—Oh, it had.

Q. Had it not been surveyed prior to that?

A. I think not.

Q. There is no evidence—

A. I don't know any evidence of any survey.

Q.—prior to the Kalakaua survey in 1874, is there, of Kioloku, any that you know of, referring to the whole ahupuaa?

A. I don't recall any, sir. [180-113]

Mr. LIGHTFOOT.—This is just for the purpose of getting the ruling of the court now; I don't wish

(Testimony of Walter E. Wall.)

to trench upon the former ruling of the court—

Q. I will ask you if you know of any particular instances in old surveys where the word konohiki was used as a boundary between the land surveyed and government or crown lands?

Mr. ROBERTSON.—We submit the question is objectionable under the ruling already made.

The COURT.—I think so. Objection sustained.

A. Yes.

The COURT.—No, the objection is sustained.

Mr. ROBERTSON.—Answer stricken out, your Honor?

The COURT.—He has answered, however. You move to strike it out?

Mr. ROBERTSON.—Yes, your Honor.

The COURT.—The answer will be stricken out.

Mr. LIGHTFOOT.—Q. I wish to understand the custom of the survey department of the Territory of Hawaii since you have become acquainted with it, relative to making annotations on maps. First, what is a registered map?

Mr. ROBERTSON.—I thought we had gone into that yesterday, your Honor. I object to the question on the ground that it is irrelevant and immaterial what the custom of the survey office has been.

The COURT.—What is a registered map, that's the question, I understand, the other portion having been withdrawn by reason of putting that one.

Mr. ROBERTSON.—All right.

The COURT.—That's correct, is it?

Mr. LIGHTFOOT.—Yes, your Honor. [181-114]

(Testimony of Walter E. Wall.)

A. A registered map of the survey department is one that has been placed on file for reference and given a regular number; indexed and given a number for reference.

The COURT.—Q. Becomes part of the record of the office?

A. It is different from the records—

Q. It becomes a part of the official record in the office? A. Yes.

Mr. LIGHTFOOT.—Q. And registered maps are made and become part of the records of the office from time to time; they are not merely ancient documents, then? A. Well, not—

Mr. ROBERTSON.—I object to that, if the court please.

Mr. LIGHTFOOT.—It may be leading.

Mr. ROBERTSON.—We don't care about this witness' opinion as to what constitutes an ancient document.

The COURT.—Hasn't he answered the question when he says they become part of the records of the office when they are registered?

(Argument.)

Mr. ROBERTSON.—Whether new maps are now being filed and registered?

The COURT.—Yes, that is the way I understand it

The WITNESS.—Yes, maps are being filed from time to time.

The COURT.—Covering the same land—

A. Very same purpose, as they are accumulated, are acquired from private sources as well as those

(Testimony of Walter E. Wall.)

from surveys of the Government staff. They are filed for reference for further information in dealing with land titles and in arriving at more particularly the Government areas, to determine the limits of the Government land. [182—115]

Q. Well, isn't it a fact that some of these maps are occasioned—that is, the reason for making them is because there has been a change in the survey?

A. No, merely—May be an entirely new survey, an entirely new study, and it is filed there for what it is worth, to have given further consideration and reference, practically.

Q. For instance, a large tract of land may be cut up into smaller pieces and a new map may be made of it?

A. A new map may be made of it. A detail map generally is of a subdivision, of larger scale than for the purpose of giving a comprehensive idea of its position and extent, and reduction is made and the same is then embodied on the district map.

Mr. LIGHTFOOT.—Q. Now is any effort made to keep the—I withdraw that. So that all maps which are acknowledged by the Government to be correct and are recorded in the office of the surveyor of the Territory may be described as registered maps, is that true?

A. Well, the maps are regularly filed and registered, whether they are acknowledged to be correct or not. A map—don't necessarily need to acknowledge them to be correct. We are very glad to get all the information we can, as it assists in arriving at facts. We don't accept a plan when it is filed as rep-

(Testimony of Walter E. Wall.)

resenting the real facts,—None of us are absolutely accurate, so to speak, we are all likely to err some time or other; and maps are filed for their worth.

Q. Now then, when any change takes place with regard to the land which is described on a registered map, for instance, a land grant, or, for instance, the changing of a road, or, for instance the subdivision of a piece is anything made on [183—116] a registered map of such change?

Mr. ROBERTSON.—We object to that, on the ground that it is irrelevant and immaterial. Simply filling up the record here with matters that do not throw any light on the issues in this case whatever.

Mr. LIGHTFOOT.—This arises, of course, on account of the pencil memorandum made on the registered map by Professor Alexander, on the map of Mr. Lyman which is a compilation. It seems to me that, in view of the position taken by counsel as to that pencil memorandum, that we should be able to show what is the custom and what has been the custom of the survey department with regard to making of such indications of changes as I have referred to for the purpose of keeping maps up to date.

(Argument.)

The COURT.—I think the objection is well taken. It will be sustained.

Mr. LIGHTFOOT.—Q. Do you in the survey office record and register any maps relating purely to contracts between private parties?

Mr. ROBERTSON.—Objected to as irrelevant and

(Testimony of Walter E. Wall.)

immaterial, having no bearing on any issue in this case.

The COURT.—I fail to see the materiality.

(Argument.)

I think the objection is well taken. Objection sustained, on the theory that no question of that character, as I understand, is involved in this case.

Mr. LIGHTFOOT.—That's all, Mr. Wall.

[184—117]

Cross-examination by Mr. ROBERTSON.

Q. Have you here the maps that you had yesterday afternoon, Mr. Wall? A. Yes.

Q. Where is registered map 1407? A. 1409.

Q. 1409, yes. Referring you to Petitioner's Exhibit A, a map of the Kau District, dated in 1885; on it is designated that it is compiled by J. F. Brown, September, 1885, principally from surveys by F. S. Lyman? A. Yes.

Q. When a map is designated as having been compiled, that shows, does it not, that it is not the individual work of the man who made the map, but that he simply drew the map from surveys made by other people?

A. A compiled map by a private surveyor might represent his own work, individual work. That of one in a public office like the survey department might represent his own study, after consultation with others in the office and giving weight to matters that had been discussed and found to be correct by further investigation. The main object of a

(Testimony of Walter E. Wall.)

later compilation being to—to correct erroneous information.

Q. Yes, or it may be an erroneous correction as far as that goes? A. Possibly, yes.

Q. Let me ask you whether J. F. Brown was a private surveyor or in the Government employ when he made this map or when he compiled this map, rather? A. What's the date?

Q. September, 1885.

A. I would not be quite certain of it. We have records [185—118] that will show it. I rather think that he was in the Government survey at the time.

Q. Can you decide that right now, or not?

A. I couldn't make a positive statement.

Q. All right. Well, I will ask you again, if, when a map is stated on its face to be a compiled map, doesn't that necessarily imply that it is not the individual work of the compiler on the ground?

A. No, it is a compilation of records available. Mostly they are in the office.

Q. In other words, it negatives the idea of any original work being done by the man who compiled the map?

A. So far as the field work goes, yes, but not work in shifting out datas of documents and maps and records or maps available.

Q. So that, in compiling a map, although it is stated on its face to have been compiled principally from certain recorded surveys, might involve the changing of boundaries of land, for instance, by the

(Testimony of Walter E. Wall.)

compiler if, in his opinion, the original survey which he refers to as being among the data that he made the compilation from was not correct?

A. Yes, if the compiler had reasons to believe that the original from which he was compiling was not well established, had later and better authority, he would be disposed to add that where he could.

Q. Yes, In other words, Mr. Wall, generally speaking, isn't this the fact, that a map of a district showing the various lands and their boundaries, etc., really represents the understanding or opinion of the surveyor who made that map up at the time?

A. It does, in a sense, and yet it also represents the work of others. It refers to— On this particular map, for [186—119] instance, it refers to the surveys of Lyman principally. but it also implies that he had other surveys as well, and naturally consideration was given to the accuracy of the different records used in the compilation.

Q. Yes, but that doesn't come to the point. After all is said and done, referring particularly to this Exhibit "A" here, this map compiled by J. F. Brown, as a matter of fact it is correct to say that that map there represents the opinion or the understanding of Mr. Brown as to the character and situation of the lands shown on the map at the time he made it.

Mr. LIGHTFOOT.—I submit the question has been asked and answered, gone into completely.

The COURT.—I think the question is proper.

(Testimony of Walter E. Wall.)

A. Yes, naturally it is Mr. Brown's work or represents his opinion of it, possibly with the assistance of consultation in the office. Naturally, Mr. Brown approves of that record as it is there or he wouldn't have finished the map, but it is not necessarily his own views; he may have consulted others in the office there; he has made use of the office—office records, had opinions expressed back and forth where there were any differences of opinion. In other words, his conclusions; the conclusions there represent, yes, Mr. Brown's work, you might say.

Mr. ROBERTSON.—Q. Well, doesn't represent his work so much as it represents his understanding? A. His understanding of it, yes.

Q. Well, do you mean that a surveyor, in compiling a map like this, would yield to the opinions of others with whom he may have consulted and by his map shown something that he himself did not fully agree to, but had yielded to the opinions of those [187—120] others? A. I should—

Mr. LIGHTFOOT.—That is calling for an opinion of the witness.

The COURT.—Do you object?

Mr. LIGHTFOOT.—We object to it.

The COURT.—I believe the objection is well taken.

The WITNESS.—I think that is a fair question. He asked as to whether that surveyor would designate on the map there an opinion contrary to his own will—

(Testimony of Walter E. Wall.)

The COURT.—I think the objection should be sustained.

Mr. ROBERTSON.—Q. Now, one more, Mr. Wall, Registered Map 1907.

A. Map of Kau. Registered map 1807.

Mr. ROBERTSON.—I think, if the Court please, that these maps ought to be properly marked as exhibits in the case and left here.

The COURT.—It has always been the custom not to mark public records but to fully describe them in the minutes.

Mr. ROBERTSON.—What position does that put us in?

(Argument.)

Q. A blue-print could be made of these, I suppose, Mr. Wall?

A. My position in that matter is this,—I wish to make it very plain so there will be no possible misunderstanding in the matter,—I have frequently been asked to furnish certified copies of either a map as a whole or a portion of it. My practice in the past has always been to compare it very carefully and see that everything shown on that section of the map was designated on the tracing before I certified to it. I take it that it is not for me to say whether there is anything rightfully on there or otherwise. Now, take the map involved, there are notations there in pencil and I have [188—121] no knowledge as to whether they were placed on there before the instrument was registered, filed in the office, or not. If, for the sake of argument,

(Testimony of Walter E. Wall.)

we will say that they were not on there before they were filed, then, under the contention of opposing counsel we have absolutely no right to remove them.

Q. The question now is as to getting a certified copy of the map. Can you not make blue-prints of it?

A. Tracings can be made and blue-prints furnished. I did have a tracing prepared and was writing a certificate on it when I was called to withhold it for the reason that they wished to have those pencil notations eliminated.

Mr. ROBERTSON.—It seems to me that we ought to have certified copies of all the maps put in evidence.

The WITNESS.—They can be made. We are very willing to make them,—anything that either counsel asks for and the Court orders, we will make and certify.

(Argument.)

Mr. LIGHTFOOT.—Well, we will supply certified copies of the maps we have used.

Mr. ROBERTSON.—Then, as far as our exhibit is concerned, I insist, if the Court please, that your Honor retain the map on the file of the case here,—the map of 1879. It is our exhibit, not theirs, and we are entitled to have it remain in the record here. That is what I am driving at.

(Argument.)

I deny absolutely that that map of 1879 of F. S. Lyman's, of the Kau District, is being used from

(Testimony of Walter E. Wall.)

day to day, by the public or anybody else.

The COURT.—Q. Is it in constant use? [189—122]

A. It has been customary in the past to furnish certified copies.

Q. Well, I mean as far as the use of that map in the office is concerned.

A. Well, it may be consulted at any time and may not be consulted in months, and yet some one may be in the very next hour or next day to see it. It is a convenient and proper thing, I believe, to have the record in the survey office. They are available at the call of the Court at any time, at five minutes' call, or a certified copy of the map as a whole or a portion may be had.

(Argument.)

The COURT.—Well, I will ask the surveyor in his certificate to note the fact that certain marks were annotations in pencil; I would ask that.

The WITNESS.—Oh, that could very easily be done. That we are perfectly willing to do.

The COURT.—In addition to the certificate that you make of the certified copy, all pencil notations, whatever they may be, have that a part of the certificate, point them out, say that such and such pencil memorandum—or such a mark is in pencil.

The WITNESS.—Well, I have already started out to do that and that is what they objected to doing; I am willing to do that.

(Argument.)

The COURT.—I think that will be sufficiently

(Testimony of Walter E. Wall.)

clear. That is the best we can do under the circumstances

Mr. ROBERTSON.—Q. Well, referring now to Exhibit "C" in this case, the map—Map No. 1807. This is a map compiled by F. S. Dodge from surveys made by M. D. Monsarrat, J. S. Emerson and F. S. Lyman, was it? [190—123] A. Yes.

Q. And what you have already said with reference to the other map, Exhibit "A," and compiled maps in general, would apply to this map, would it not? A. Yes.

Q. This map, dated in 1879, by F. S. Lyman, said to be compiled by him, shows on its face—no, contains on its face—this statement, "Showing ahupuaas, grants and unsold government land," does it not? A. Yes.

Mr. LIGHTFOOT.—Compiled by F. S. Lyman in 1879.

Mr. ROBERTSON.—Yes, exactly.

The CLERK.—That is exhibit No. 1 of respondent.

Mr. ROBERTSON.—Q. You yourself had nothing to do with the making of any of these maps?

A. Nothing to do with the making of the maps.

Q. You don't claim to be versed in the Hawaiian language, do you, Mr. Wall?

A. Not an expert in the Hawaiian language.

The COURT.—Q. Read it or write it, do you?

A. No.

Mr. ROBERTSON.—Q. I will call your attention to the plan in evidence here. Respondent's

(Testimony of Walter E. Wall.)

Exhibit No. 9. It shows the Ahupuaa of Honuapo, adjoining the Ahupuaa of Kioloku. It shows that the Ahupuaa of Honuapo was awarded to W. C. Lunalilo by Land Commission Award 8559B, Apapa 13. Would it be correct to say that, from and after the date of that award, W. C. Lunalilo was the konohiki of that ahupuaa?

A. What was the date of the award? I would like to know the date of the award. [191—124]

Q. I don't know. Doesn't make a bit of difference, as a matter of fact. Wasn't the awardee of any ahupuaa from and after the date of his award the konohiki of that ahupuaa?

A. The owners of the awards, the chiefs, yes, were konohikis.

Q. Well, I will ask you the question, then, that we came away from. Irrespective of the date of Land Commission Award 8559B, as a matter of fact, from and after the date of that award, whatever it was, wasn't W. C. Lunalilo the konohiki of the Ahupuaa of Honuapo?

A. Yes, he probably was the konohiki.

Q. What's that?

A. Yes, he was the konohiki.

Q. What are the four large general classes of lands in these islands? A. What's the question?

(Question read by the reporter.)

A. There were the crown lands, the konohiki land, Government land and the kuleanas.

Q. Yes, the crown lands and Government lands being public property, the konohiki lands and the

(Testimony of Walter E. Wall.)

kuleanas being private property, isn't that so?

A. The crown lands were held by the crown at the time as of their own lands, the title really being in the Government; they have come down to the Government at the present time; so the crown and Government land would be Government; konohiki lands would be the private ownings of the chiefs, and the kuleanas the subjects of the king or chief.

Q. That is, the kuleanas the private property of the common people?

A. Of the common people holding under the chiefs.

Mr. ROBERTSON.—That's all. [192—125]

**Testimony of Robert C. Lydecker, for Petitioner
(In Rebuttal).**

ROBERT C. LYDECKER, a witness called on behalf of the petitioner in rebuttal, being first duly sworn, testified as follows:

Direct Examination by Mr. LIGHTFOOT.

Q. Your name, please, sir? A. What's that?

Q. What is your name?

A. Robert C. Lydecker.

Q. And what is your position?

A. Librarian, Public Archives.

Q. And, as such, you have custody of the archives of the Government?

A. Why, I am in charge of them. The custody is really in the Commission.

Q. But you have charge of them?

A. I have charge of them.

(Testimony of Robert C. Lydecker.)

Q. Showing you your certified copy of Exhibit 1 I will ask you from what records that was taken.

A. Well, it was taken from the original letter on file in Archives.

Q. It was taken from the original letter on file in what case?

A. In the—original—well, I can't say in what case; I have no knowledge of that.

Q. Were there other papers with that?

A. There were four enclosures with this.

Q. Four enclosures with that? A. Yes, sir.

Q. And they were filed in the case of Thurston, Minister of the Interior, against Bishop, were they not?

A. No, I don't know that—that this letter was filed in that [193—126] case.

Q. But it was with those papers, was it?

A. No, sir, it was with—it was not—

Mr. ROBERTSON.—I object to it as irrelevant and immaterial, whether the letter in question has ever been used as an exhibit in some other lawsuit.

Mr. LIGHTFOOT.—I want to get the rest of the papers in the same bunch that this came from.

Q. Have you the papers now in the custody of the archives, public archives, in the matter of Thurston against Bishop? A. Yes, sir.

Mr. ROBERTSON.—Objected to as irrelevant and immaterial, having no bearing on this case.

The COURT.—Of course I don't know what the papers are yet. I can't rule upon the objection; I don't know what the papers are yet.

(Testimony of Robert C. Lydecker.)

The WITNESS.—I will qualify that statement by saying all the papers that were found in the archives was in one bundle, tied together such as I have them here; whether they were all the papers or not of course I can't tell.

The COURT.—Perhaps you might state in a general way what these were.

Mr. LIGHTFOOT.—One of the papers, marked as an exhibit in that case of Thurston versus Bishop.

The COURT.—Exhibit for what purpose? What is it?

Mr. ROBERTSON.—I have no doubt there were numerous exhibits in the case of Thurston against Bishop. What has that got to do with the Territory against Hutchinson Sugar Co.?

(Argument.)

Mr. LIGHTFOOT.—The purpose is to show that there are other schedules of unassigned lands in the same batch of papers [194—127] from which Exhibit 1 was taken that shows Kioloku as an unassigned land.

Q. I show you one of the papers taken from that, and there is a writing at the bottom of that paper. Do you know that writing; do you recognize that writing?

Mr. ROBERTSON.—I object to the question until I have an opportunity to see it.

(Shown to counsel.)

Object to it as irrelevant and immaterial and not properly identified.

(Testimony of Robert C. Lydecker.)

Mr. LIGHTFOOT.—When I speak of "that writing" I mean the words (reads) and written also in pencil, "Area 2087 acres." Do you know whose writing that was? A. Yes, sir.

Q. Whose was it?

A. Professor W. D. Alexander.

Mr. LIGHTFOOT.—I offer this paper in evidence, if the Court please, coming—at least I offer a certified copy of the paper in evidence.

The COURT.—As I understand that is offered for the purpose of showing that Kioloku was un-assigned.

Mr. LIGHTFOOT.—Unassigned.

The COURT.—And so mentioned on the paper?

Mr. LIGHTFOOT.—Yes, your Honor.

The COURT.—Objection is overruled.

Mr. LIGHTFOOT.—I will offer the certified copy. (Reads.)

The COURT.—You object to this, do you?

Mr. ROBERTSON.—Why, certainly, your Honor.

Mr. LIGHTFOOT.—It is on exactly the same basis as Exhibit 1.

The COURT.—Isn't this signed?

Mr. LIGHTFOOT.—No, your Honor, the letter was signed but the [195—128] list of lands is not signed in Exhibit 1.

The COURT.—I admitted it the other day on the theory that it was attached to the report.

(Argument.)

Mr. LIGHTFOOT.—Anyhow, the case, as I un-

(Testimony of Robert C. Lydecker.)

derstand it, is this: There is the Alexander letter, saying "I submit herewith a list of lands," and there is in the same batch of papers several lists of lands, of which counsel has selected one. That the one selected by counsel was no more attached to the letter than is this one, but was a part of the whole bunch of papers; therefore, if the other list of lands was admissible, then this is admissible.

Mr. ROBERTSON.—I will have to ask counsel to withdraw his statement that counsel, meaning me, selected the lists that were attached to that letter. I did nothing of the kind and counsel is talking about something I know nothing about, evidently.

(Argument.)

I ask that counsel be required to retract his statement that counsel—meaning me—selected the list attached to the exhibit. It is untrue, your Honor.

Mr. LIGHTFOOT.—I didn't mean to impute that there was any wrongful selection, but there were several lists there in that record—

Mr. ROBERTSON.—I insist on my point. I insist that the statement of counsel be withdrawn, because it is untrue.

(Argument.)

Counsel is dodging. I insist that the Court make him withdraw that statement or else prove the truth of his assertion.

Mr. LIGHTFOOT.—Well, I will prove the truth of what I say. [196—129]

Mr. ROBERTSON.—Go ahead and prove it.

(Testimony of Robert C. Lydecker.)

Mr. LIGHTFOOT.—And if I am mistaken I will withdraw the statement.

Q. Mr. Lydecker, at the time that you certified to the copy of the letter of Mr. Alexander with the—with a list of unassigned lands, being Defendant's Exhibit No. 1, were there or were there not in the same bunch of papers several other lists of unassigned lands of which the one last offered in evidence was one?

Mr. ROBERTSON.—I object to the question—

A. No.

Mr. ROBERTSON.— —as irrelevant and immaterial and counsel is still dodging. He is undertaking now to prove the truth of his statement that I went over there and selected certain lists. Let him prove his statement and get at the truth of this—

The COURT.—I permit the question.

The WITNESS.—What was the question?

(Question read by reporter.)

A. There were not. This paper is entirely separate from this—this list here; nothing—

Mr. LIGHTFOOT.—Q. What do you mean when you say "this"? That doesn't convey to the reporter or the record here, Mr. Lydecker—

A. Well, I mean that this letter of Professor Alexander's and the four enclosures were not included with this bunch of papers that I have here on the table from which this is taken from.

Q. That is, the last exhibit? A. Yes.

Mr. LIGHTFOOT.—Then I withdraw the state-

(Testimony of Robert C. Lydecker.)

ment. I was under misapprehension in the matter. I had understood from Mr. [197—130] Lydecker that the whole—all the papers were together as they were together when I saw them the other day.

The COURT.—Now the question comes as to whether or not this is admissible or not.

Mr. ROBERTSON.—Our objection is that it is irrelevant and immaterial, incompetent, has no bearing on any issue in this case, not been properly identified and, therefore, should not be admitted. We make special objection, if the court please, to the certification of Mr. Lydecker as being in improper form. The certificate there is (Reads)

The COURT.—I think myself it is objectionable. It should certify that the foregoing is a true copy of what he finds there and not express any opinion as to it.

Mr. LIGHTFOOT.—I think perhaps that is well taken. May I have that certificate amended? That is was merely—

The COURT.—I think the certificate upon its face is objectionable because the librarian is expressing his opinion about matters which are in litigation.

The WITNESS.—It was put in that form to identify it as being with this batch of papers, otherwise I would merely certify it was a paper on file in the archives.

(Argument.)

The COURT.—Well, the objection is sustained, anyway, as it now stands.

Mr. LIGHTFOOT.—We offer to prove, may it

(Testimony of Robert C. Lydecker.)

please the court, that there is in the custody of the Archives, Board of Archives, whatever the term is, a document entitled, "List of unassigned lands occupied by private parties without any title from the Government," in which is included, under the title W. G. Irwin & Co., the land of Kioloku, in Kau, Hawaii, 834 Acres, and at the foot of which there is a writing by Professor Alexander [198-131] which has been identified as the writing of Professor Alexander—

The COURT.—But no signature?

Mr. LIGHTFOOT.—Not signed, no.

Mr. ROBERTSON.—He is simply offering again the document your Honor just ruled on, as I understand it.

The COURT.—Well, there is no question, Mr. Lightfoot, but what you have a right to prove, if you can, by a proper document, that the land in question is unassigned land, but I couldn't admit this in evidence.

Mr. LIGHTFOOT.—I ask that it be marked for identification.

The COURT.—Very well, this will be marked for identification.

Mr. LIGHTFOOT.—Q. I will ask you, Mr. Lydecker, if you have a paper endorsed "Re unassigned lands, L. 2602, Exhibit "D," Thurston versus Bishop, May 1st, 1888, H. S. list of Unassigned Lands. This copy was substituted on May 24th, 1888, for the written one then on file by permission of Mr. Justice Dole. S. J. H. Reist, Second

(Testimony of Robert C. Lydecker.)

Deputy Clerk"? A. Yes, sir.

Q. Will you produce it, please?

(Shown to counsel.)

Mr. LIGHTFOOT.—I offer in evidence, may it please the Court, a certified copy of the portions of this instrument that we rely upon, not being the complete copy of the whole thing, the other being immaterial.

The COURT.—What is the instrument?

Mr. LIGHTFOOT.—It is entitled: "List of lands omitted in the Mahele of 1848, Island of Hawaii, District of Hilo, etc., and the District of Hamakua, etc., and further and in the same document estimated area of unassigned lands Island of Hawaii, etc., in which list of lands omitted in the Mahele of 1848 the land of Kioloku is included. [199—132]

The COURT.—By name? Mentioned by name?

Mr. LIGHTFOOT.—Yes, and in the other list, estimated area of unassigned lands, Kioloku is included; that being in this—there is in this paper some count of leaseholds that have nothing to do with the case at issue and so we didn't have that certified.

Mr. ROBERTSON.—No objections to the form of the certificate in this instance, but I object to the exhibit offered on the ground that it is irrelevant, incompetent and immaterial, having no bearing on any issue in this case, and on the further ground that the list was not identified and does not purport to be a list compiled by anyone having

authority to make up such a list. Furthermore, that it is—

The COURT.—Not signed by anyone?

Mr. ROBERTSON.—And the additional objection that the document, if it is really what it purports to be, comes from the wrong source; in other words, this purports to be endorsed as an exhibit filed in the case of Thurston against Bishop—

The COURT.—What is it doing over there?

Mr. ROBERTSON.—Well, that is just exactly what I say; there is something wrong here. If that was really an exhibit in the case of Thurston against Bishop it would be in the archives of this court, not over in the Public Archives of the Executive Department.

(Argument.)

The COURT.—I don't believe that is admissible, Mr. Lightfoot, I sustain the objection on the ground that there is nothing upon the paper which is authoritative. It is not signed by anyone and—

Mr. LIGHTFOOT.—Well, I ask leave, may it please the Court, that the portion—

The COURT.—It is nothing more or less than a mere “scrap of [200—133] paper” as the Germans would say.

Mr. LIGHTFOOT.—Yes. I don't like that term. I ask that the certified portions referred to be marked for identification.

The COURT.—Very well; mark that for identification.

Mr. LIGHTFOOT.—That's all, thank you.

**Testimony of S. M. Kanakanui, for Petitioner.
(In Rebuttal).**

S. M. KANAKANUI, a witness recalled on behalf of the petitioner in rebuttal, testified as follows:

Direct Examination by Mr. LIGHTFOOT.

Q. Mr. Kanakanui, you are a Hawaiian, are you not? A. I am.

Q. And you are familiar with Hawaiian words?

A. Yes, sir.

Q. And familiar with the terms used in surveying? A. Yes, sir.

Q. What have you to say with regard to the use of the word konohiki in surveys?

Mr. ROBERTSON.—I object to it on the ground—

Mr. LIGHTFOOT.—Q. What does it mean?

Mr. ROBERTSON.—I object to it as too general, irrelevant and immaterial.

The COURT.—Objection overruled. What's your answer?

A. It had been used as a general—

Q. The question is, what is your understanding?

Mr. LIGHTFOOT.—Yes.

The COURT.—Q. What is your understanding of that term?

A. "Konohiki" in a survey of Kuleanas, isn't it? [201—134]

Mr. LIGHTFOOT.—Yes.

A. Or the term "Konohiki"—

(Testimony of S. M. Kanakanui.)

Q. As used in the survey of kuleanas.

A. Generally used as the landlord of the adjoining land, either Government land or crown land or konohiki land.

The COURT.—Q. Would Government land be—For instance, a kuleana situated within Government land, now which form of boundaries—Would you say the Government land was “konohiki”?

A. Were used by surveyors as “Konohiki” too; generally used.

Mr. LIGHTFOOT.—Q. You know of instances in which the word konohiki has been used as the boundary of a kuleana situate within Government or crown lands. A. Yes, sir.

Q. Are there many of such instances?

A. Oh, there are many.

Q. I will just ask you the general question, do you know of any specific instances?

Mr. ROBERTSON.—Objected to as irrelevant, incompetent and immaterial.

(Argument.)

Mr. LIGHTFOOT.—I take it, the objection will be sustained?

The COURT.—Sustained, on the ground it is already asked and answered.

Mr. LIGHTFOOT.—Q. Have you with you a record of a petition of Kealaha-ai for the registration of the boundaries of an ahupuaa called Waiamau?

Mr. ROBERTSON.—Objected to as incompetent, irrelevant and immaterial, having no bearing on

(Testimony of S. M. Kanakanui.)

any issue— A. I have.

Mr. ROBERTSON.—Having no connection with the land of Kioloku.

The COURT.—Where is it pertinent? [202—135]

Mr. LIGHTFOOT.—I will state the object of my proof—offer of proof. I think that it comes within the ruling of your Honor on a former occasion, but I may be in error in that. We offer to prove that, after the decision of the case of Thurston, Minister of the Interior, against Bishop — No, let me withdraw that. We offer to prove that there was a piece of land situate in the District of Kau by name of Waiamau; that this land was maheled or divided in the Great Mahele of 1848, and set apart in that Mahele to Kealoha-ai; that Kealoha-ai failed to present his claim to Waiamau before the Land Commission in the time required by law, and also failed to get a grant of the Minister of Interior, which was provided for under the Act 1860 for the relief of Konohikis who had failed to file their claims before the land commission, which claims had been decided in the Mahele; that he had failed to take advantage of the Act of 1860, that thereafter Kealoha-ai, to whom the land of Waiamau had been set aside in the Mahele, applied to the land Commission—applied to the boundary commission for a certificate of boundaries of this same land—

The COURT.—That he had failed to—

Mr. LIGHTFOOT.—That he had failed to—

The COURT.—present his claim—

Mr. LIGHTFOOT.—Present to the land board,

(Testimony of S. M. Kanakanui.)

and that a certificate was issued to him, and thereafter he went to the legislature of 1890 and secured from the legislature the passage—went to the legislature and secured from the legislature the enactment of a law granting this land of Waiamau to him, in spite of his failure to present the land maheled to him before the land commission. That is the object of the present question.

The COURT.—What bearing has that on this case? [203—136]

Mr. LIGHTFOOT.—That is a case that is on all-fours with this case. It is a similar case.

The COURT.—Is it for the purpose of showing that the claimants of the land in question could have done likewise?

Mr. LIGHTFOOT.—Yes, that they could have done likewise, but having failed to do that they have no more claim by reason of the certificate of the boundary commission than they would have had without it.

The COURT.—I understand you further to offer that this was set aside to someone and they failed to present their claim,—this land in question?

Mr. LIGHTFOOT.—This land of Kioloku? No, your Honor, this is another land altogether.

Mr. ROBERTSON.—We object to the offer, your Honor.

The COURT.—Objection sustained.

Mr. LIGHTFOOT.—That's all.

Cross-examination by Mr. ROBERTSON.

Q. Mr. Kanakanui, after the Mahele—from and

(Testimony of S. M. Kanakanui.)

after the Mahele, when the ahupuaas were divided off to the chiefs, the chiefs then became the konohikis of the ahupuaas which were divided off to them, did they not?

A. Not in a strict sense; not until after the dissolution of the land commission; then they are legally known as konohiki land. Between the Mahele—

Q. You explain it then.

Mr. LIGHTFOOT.—Let's have the rest of the answer.

The COURT.—Go ahead.

A. Between that Mahele of 1848 and the dissolution of the land commission the land standing in the name of those konohikis by the Mahele are subject to a division to be given to the [204—137] Government, one-third of their lands.

Mr. ROBERTSON.—Q. But that was taken in money commutation—?

A. No, it was taken in land.

Q. Oh.

A. And those lands were set apart by those konohikis as a Government commutation to the rest of their lands.

Q. The COURT.—Q. When was this land commission dissolved?

A. In 1854. The sentiment prevailing at the time of the Mahele, these chiefs were termed "Kono-hiki, superior landlord."

Mr. ROBERTSON.—Q. How old are you? What year were you born in?

(Testimony of S. M. Kanakanui.)

Mr. LIGHTFOOT.—Q. Was that all you had to say on that subject, Mr. Kanakanui, or had you just taken breath?

Mr. ROBERTSON.—I want to know what year he was born in, now.

Mr. LIGHTFOOT.—I submit we are entitled to the whole of the answer. It is not finished.

The COURT.—Q. Have you anything further to say in answer to the question? Had you finished your answer? A. No, I did not.

Q. Had not finished?

A. I had not finished.

Q. All right, finish your answer.

A. You mean answer to his question, how old—when I was born?

Q. Had you finished your answer to his question?

Mr. ROBERTSON.—He has not answered my question. The question is already answered; he was going into a general discussion that is not called for by the question at all. The question now is, how old, or when were you born?

Mr. LIGHTFOOT.—I submit the previous question is not answered.

The COURT.—He said he had nothing further to say. [205—138]

Mr. ROBERTSON.—The question is answered, with great fullness.

Mr. LIGHTFOOT.—I understand him to say that his answer was not complete.

The COURT.—Q. Well, is it complete or is it

(Testimony of S. M. Kanakanui.)
not? Have you got anything further to say in answer to Judge Robertson?

A. Well, I am going to tell him, to answer him.

Q. All right. The question now is, when were you born?

A. I was born in November the 5th, 1864.

Mr. ROBERTSON.—Q. Yes, ten years after the land commission was dissolved.

A. And I am pretty near 54 years old.

Q. Yes. Now, I will ask you the same question I asked Mr. Wall: Here's the case of the Ahupuaa of Honuapo, awarded to W. C. Lunalilo by Land Commission Award 8559B, Apana 13. Upon that award to Lunalilo he became the konohiki of the Ahupuaa of Honuapo, didn't he?

A. Upon that award, yes.

Q. Yes, and that is so as to the awards of other ahupuaas, to other awardees in general?

A. That is.

Q. When they received their award they become the konohikis of the ahupuaa, isn't that so?

A. They were konohikis before.

Q. They were konohikis, then, before that, but they were—but they may have been dispossessed by reason of the division in the Mahele, isn't that so? In other words, prior to the Mahele, a certain chief may have been konohiki of a certain ahupuaa, but in the division of the Mehele that ahupuaa may have been divided to some other chief, mayn't it?

A. Yes. [206—139]

Q. So that the first chief then ceased to be the

(Testimony of S. M. Kanakanui.)

konohiki of that ahupuaa? A. Yes, sir.

Q. Yes. But when he went before the Land Commission and got his award for that ahupuaa, then he became the konohiki of that ahupuaa for sure, didn't he?

A. The term "Konohiki" is—it is inferior.

Q. What?

The COURT.—Inferior.

A. His position—Lunalilo's position really, in fact, is not a konohiki—

Mr. ROBERTSON.—Q. You mean under Land Commission Award No. 8559B?

A. Yes, although it was stated "konohiki land," but the term "konohiki" is a little lower than the ownership of the land.

Q. Yes, but now, Kanakanui, you are referring to the ancient meaning of the term, prior to the Mahele, are you not? A. Yes.

Q. Yes; but since the Mahele the awardees of the ahupuaas have themselves been called the konohikis, haven't they?

A. After they secured their awards?

Q. Yes. A. Yes.

Q. And from that time on they have been properly called the konohikis of their respective ahupuaas? A. Yes, sir.

Q. What is the correct and proper term, Hawaiian term, applicable to Government land?

A. Aina aupuni.

Q. So that, if a kuleana is bounded on one or more sides by Government land, it is proper, in

(Testimony of S. M. Kanakanui.)

the old Hawaiian description [207—140] of the kuleanas, to say that it “runs along aupuni”; that is a correct description and use of the term, is it not?

A. If the kuleana included inside of Government land.

The COURT.—Well, that is the question, if it borders on Government land.

A. Yes, Yes, that is correctly represented.

Mr. ROBERTSON.—Q. Yes. In other words, if, at the time a kuleana is awarded, it is situated within a Government ahupuaa, it would be a correct description of that kuleana to show that it was bounded by “Aupuni”? A. Yes, sir.

Q. Yes; and if a kuleana, on the other hand, is situated within an ahupuaa that had been awarded to a chief, then the proper description would show the land bordering or surrounded—bordering on or surrounded by konahiki land? A. Yes.

Q. That would be correct, wouldn't it?

A. Yes.

Q. And if a different use should be made of either of those words, konohiki or aupuni, it would be either a mistaken or an incorrect use, would it not?

The COURT.—That is, the kuleana is in the Government land.

Mr. ROBERTSON.—Q. You wouldn't say surrounded by—if they used the word “konohiki” it would be considered a mistake or misuse, wouldn't it?

A. No; no, that all depends—

(Testimony of S. M. Kanakanui.)

Mr. LIGHTFOOT.—Do I understand—

A. It all depends on the knowledge of ownership acquired by the surveyor that going on the ground at the time.

Mr. ROBERTSON.—Q. Yes, I understand your point, but you don't get my point. I am not talking about the use of terms as they [208—141] have in fact been used by different surveyors; I am asking you now as an expert in the Hawaiian language, what is the correct use of the word? In other words, if a kuleana is situated within a Government ahupuaa, it would be incorrect in describing that kuleana to say that it was surrounded by konohiki land, isn't that so?

A. No, no, it is not wrong.

Q. Let me put it the other way, then; If a kuleana is situated within an ahupuaa that has been awarded to some chief who has obtained title to it and it has thereby become a konohiki land, wouldn't it be incorrect in describing that kuleana to show that it was surrounded by aupuni land?

A. Yes, it is wrong.

Q. But you deny that the rule works the other way, do you? A. Yes, sir.

Q. As a matter of fact, what's the four classifications of the lands of this Territory, as shown in the archives of your own office to-day, and what has it always been? Has it not been Government land, crown land, konohiki land and kuleanas?

A. Oh, not in the sense you are driving at. If you follow me, after the Mahele of 1848 and during

(Testimony of S. M. Kanakanui.)

the operation of the Land Commission all lands were under the konohikis and they were generally terms as "Konohiki" land—

Q. I am not thinking about that. You probably misunderstand me now.

Mr. LIGHTFOOT.—May we not have the answer?

Mr. ROBERTSON.—You have had it.

The COURT.—Q. Have you anything further to say, or have you finished your answer?

A. After the Mahele of 1848 the basis of title begin to [209—142] change and go into the Government, some a new name; some land went to the Government, gone in a new—new class, which has never been commonly known before that, and if there was a surveyor went and surveyed kuleanas within those lands, not knowing that, just prior, it was turned over to the Government, he may mention "along konohiki," which was the section known prior to 1848.

Mr. ROBERTSON.—Q. Yes, now I get you; so that your last answers here have had reference to the period prior to the Mahele, isn't that so?

A. No, the general section, that word konohiki as referred to around kuleanas within Government lands.

Q. Up to what year? A. Up to 1854.

Q. Up to 1854. All right, now I get you; and these answers that you have recently given here, these last two or three answers, have had reference to a period prior to 1854? A. Yes. sir.

(Testimony of S. M. Kanakanui.)

Q. Yes. Please eliminate that. I am talking now from 1854 down to date. As shown by the archives in the survey office of this Territory, aren't the lands divided into four main classes,—Government land, crown land, konohiki land and kuleanas?

A. And unassigned lands.

The COURT.—Q. What would unassigned lands be, but Government lands? Wouldn't unassigned land be Government land?

A. Yes, be considered Government land.

Mr. ROBERTSON.—Q. I am not talking about these subdivisions, such as school lands or fort lands, or unassigned lands. I ask you again if the records in your office, from 1854 down to date, [210—143] do not show the classification I have repeatedly specified here to you, in four main classes, Government land, crown land, konohiki land and kuleanas? A. Yes, sir.

Q. Each a separate class of its own?

A. Yes, sir; of which two of those classes merge into one later.

Q. That is, Government land and crown land?

A. Yes.

Q. Being all now public lands? A. Yes, sir.

Q. And including, you might say, what the Government claims by way of unassigned lands?

A. Yes, sir.

The COURT.—Q. So then there are only three general divisions at the present day?

A. Yes, sir.

Mr. ROBERTSON.—Q. That would be public

(Testimony of S. M. Kanakanui.)

land, konohiki land and kuleana? A. Yes, sir.

Q. Now, I am now referring to a time subsequent to 1854. Take an ahupuaa of Government land, and a surveyor undertakes to describe a kuleana situated within that Government ahupuaa, the proper way to describe that land would be to designate the boundaries as running along aupuni land, wouldn't it be—

A. The kuleana survey closed after—prior to 1854.

Q. O, well, don't bother about dates; I don't care whether it is '53 or '54 or '55; since the time of the land commission, since the land commission has closed, if a kuleana is sought to be surveyed off and described within a Government ahupuaa, [211—144] the proper way to describe those boundaries is to specify "running along aupuni," isn't it?

A. I want you to make it plain. Was it the resurvey of those kuleanas that were surveyed or before, or a survey of new kuleanas after '54?

Q. Either.

A. In 1854—after 1854, there were no kuleanos surveyed.

Q. No original surveys made?

A. Oh, the survey was made and filed and the award had been given, and some had been awarded and some had been denied.

Q. I see, and there were no new surveys of the kuleanas after 1854?

A. After the close of the land commission there

(Testimony of S. M. Kanakanui.)

were no kuleana surveys made.

Q. Well, you don't answer the point here now. I am not talking about the actual making of any surveys; I am asking you, as an expert in the Hawaiian language, as to the correct and proper use of the term. If a kuleana situated within a Government ahupuaa is surveyed and described, isn't the correct term to use, as showing along what land the boundaries of the kuleana run, to use the word "Aupuni"?

A. I don't understand you. That is, a retrace or—of the survey made prior—?

Q. No, I am talking about an original survey of a kuleana in a Government ahupuaa. Now, if you use the correct term as indicating the character of the land surrounding that kuleana, the correct and appropriate term to use is the Hawaiian word "Aupuni," isn't it?

A. Yes, of they are now, yes.

Q. Yes. Now, then, if a kuleana is being surveyed within [212—145] an ahupuaa that has been awarded to some chief, then the proper word to use in indicating along what land the boundaries of that kuleana run, the proper word and the correct word to use is the word "konohiki," is it not?

Mr. LIGHTFOOT.—We object to that.

The COURT.—Objection is overruled.

A. It was proper to define "along konohiki."

Mr. ROBERTSON.—Q. Konohiki?

A. Yes, sir.

Q. In other words, those two words, aupuni and

(Testimony of S. M. Kanakanui.)

konohiki, were used for the very purpose of distinguishing between an ahupuaa that had passed into private ownership, the private ownership of a chief by an award, and an ahupuaa, on the other hand, the title to which was retained by the government in the Mahele?

A. It was proper. It was proper, but it was proper also, at the time, to surround by konohiki, of kuleanas within Government land.

Q. Well, that would only be so in case that an award of the ahupuaa had not been made?

A. Well, all depends on the knowledge of the surveyor that went on the ground and surveyed it.

Q. I see, and also depend on the accuracy of his knowledge as to whether he was mistaken or not?

A. Yes.

Q. In other words, in surveying, making a survey, an original survey of an old kuleana, the surveyor who made it may have been mistaken in his understanding as to whether the ahupuaa in which that kuleana was situated had been awarded to a chief and become konohiki land, or whether it remained in the Government? A. Yes. [213—146]

Mr. ROBERTSON.—That's all.

Mr. LIGHTFOOT.—There is one matter that I have omitted inadvertently. I would like to get in the—a certified copy of the Mahele to Ane Keohokalole—Would you have any objection to my filing one after the proof?—Have the Mahele Book?

A. Yes, sir.

(Testimony of S. M. Kanakanui.)

The COURT.—Which one is it—this big one?

Mr. LIGHTFOOT.—I want to show the Mahele between the king and Ane Keohokalole, so that I can put in a certified copy of the mahele.

The COURT.—And it shows the land that was—

Mr. LIGHTFOOT.—Set aside for the king, on the one side, and set aside to Ane on the other.

Mr. ROBERTSON.—That is properly a part of their case in chief.

Mr. LIGHTFOOT.—Properly a part of our case in chief, but it was, through an inadvertence, not included.

Mr. ROBERTSON.—Well, I will agree to let them open on their redirect for the purpose of admitting that exhibit, if they will admit something that I have—ought to have proved, I think; that is, that all the parties to the partition deed of 1870 have since died.

Mr. LIGHTFOOT.—We will admit that they have all gone over.

The COURT.—All the parties to the partition deed?

Mr. ROBERTSON.—This deed of 1870. They have all died; that is, Liliuokalani, and Ruth and Likelike—

The COURT.—That all the parties who executed the partition deed are now dead?

Mr. LIGHTFOOT.—Yes.

The COURT.—The record will show that. [214—
147]

(Testimony of S. M. Kanakanui.)

Mr. ROBERTSON.—I do not object to their putting in a certified copy of the Mahele to Keohokalole. I would like to cross-examine Mr. Kanakanui, a question or two.

The COURT.—I would like to understand the purpose of it so as to follow you.

Mr. LIGHTFOOT.—The purpose is this, to show —It was practically admitted on our case in chief, but we want, among other things, to fix the date of this mahele, if we can. The other side is relying upon the presumption of a lost deed. We want to show that here at this date, the Mahele, there was a divisions of lands between the king and Ane Keohokalole, some being set out to the kind and some being retained by Keohokalole, in which the land of Kioloku is not mentioned as either being set off to the king or retained by Ane; in other words that it is not in the Mahele.

The COURT.—It does not mention other lands that were set off to her?

Mr. LIGHTFOOT.—Mentions other lands, yes, your Honor, but not this.

The COURT.—Is there any mention of the land in question ever having been awarded or set off to any person?

Mr. LIGHTFOOT.—No.

Q. Just refer to that page, will you, the Mahele, Ane Keohokalole—

Mr. LIGHTFOOT.—Could it be read into the record?

Mr. LIGHTFOOT.—Q. What is the book which

(Testimony of S. M. Kanakanui.)

you now hold in your hand, Mr. Kanakanui?

A. The book that contains the maheles of land between the king and chiefs. [215—148]

Q. In 1848? A. In 1848.

Q. What is this book?

A. It is a record of the land office.

Mr. ROBERTSON.—Q. Is that the original or a copy?

A. Original.

Mr. LIGHTFOOT.—Q. Now will you turn to the Mahele of Ane Keohokalole. What page is it on?

A. On page nine and page ten.

Q. What is the date of it?

A. January 28th, 1848.

Q. Now will you read what you find, any entries under that account—under that mahele. First the lands awarded—retained by the king.

A. For Kamehameha Third. The title on the top, Lands, Ahupuaa. Kalana, Mokepuni—

Mr. ROBERTSON.—How many are there?

A. Oh, it reads about 70, I think.

The COURT.—Perhaps a certified copy will be better.

Mr. LIGHTFOOT.—Perhaps a certified copy will be better. We will have that prepared and put in the record. It is unnecessary to read this. It is offered for the purpose of showing that the land in question was not one of those awarded to her.

The WITNESS.—That's the object.

Mr. ROBERTSON.—Q. In other words, Mr. Kanakanui, the mahele record which you have in

(Testimony of S. M. Kanakanui.)

your hand there shows a division of a number of pieces of land as between the king, Kamehameha the Third, on one side, and Ane Keohokalole on the other? A. Yes, sir. [216—149]

Q. About how many pieces were set aside to the king in that division? About how many; not exactly but roughly speaking?

A. About forty-five.

Q. About forty-five pieces of land.

A. Yes, sir.

Q. Was the land of Kioluku included in the list of the lands that the king reserved to himself in his division with the chiefess Keohokalole?

The COURT.—Q. This land here, Kioluku, was that reserved to the king?

A. It was not reserved. It is not contained in the list.

Mr. ROBERTSON.—Q. And neither is it mentioned in the list of lands divided off to the chiefess?

A. To Keohokalole?

Q. Ahhuh.

A. To Keohokalole?

Q. Yes. She was a chiefess, wasn't she?

A. Yes.

Q. Well, answer the question. Is the land of Kioluku mentioned in the list?

A. It was not.

Q. How many pieces of land were set off to Keohokalole in that mahele?

A. About thirty-eight.

Q. Thirty-eight; so that the land of Kioluku is

(Testimony of S. M. Kanakanui.)

not mentioned in either list, either that reserved by the kind or in that divided off to Keohokalole?

A. It isn't.

Q. Do you know whether or not there was any other division between [217—150] the king and Keohokalole besides the one you just referred to?

A. Yes, sir.

The COURT.—Q. There was another?

A. Yes, sir.

Mr. ROBERTSON.—Q. Where is it? Is there a record of that? A. Not here.

The COURT.—Q. But there is a record?

A. But there is a record. The division between Keohokalole and the Government.

Mr. ROBERTSON.—Q. Oh, that is—

A. An entire—

Q. You mean between Keohokalole and the Government as distinguished from the division between Keohokalole and the King himself? A. Yes, sir.

The COURT.—Well, wouldn't that show us something? Might show us something.

Mr. ROBERTSON.—I don't know.

The COURT.—Have you examined it, Mr. Lightfoot?

Mr. LIGHTFOOT.—I have not examined it myself, your Honor.

The WITNESS.—I have. I didn't find it contains anything there.

The COURT.—Q. Didn't find that it was reserved by the Government nor awarded to the chiefess?

A. Yes.

(Testimony of S. M. Kanakanui.)

Mr. ROBERTSON.—Q. So that in the other division that you refer to between Keohokalole and the Government the land of Kioloku is not mentioned on either side, is that it?

A. Yes, sir. [218—151]

The COURT.—Q. You are sure of that, Mr. Kanakanui? A. Yes, I am sure.

Q. Well, now, was there any other division between the king and the chiefess that you refer to, or the Government and the chiefess that you refer to? A. No more division.

Q. You know of no other?

A. No, I know no other.

Mr. ROBERTSON.—Q. There may have been some other that you can't find at the present time, isn't that so? There may have been another mahele or division that you can't find any trace of at the present day?

A. I am sure there is no other.

Q. Well, you don't know that positively, do you?

Mr. LIGHTFOOT.—I object to it. He has already answered.

The COURT.—Let's find out.

Q. Have you made search for another, Mr. Kanakanui?

A. Well, in two important division, in—in perfecting titles of konohikis, they were the division of the kind and the division of the Government. Besides that there is no other division.

Mr. ROBERTSON.—You mean to say there is no other that you know of?

(Testimony of S. M. Kanakanui.)

A. None I know of.

Q. Yes, but whether or not there was some division of which you can't find record at the present day you don't know, do you?

A. There might have been; there might have been another division, but up to now I don't know of any division.

Q. Yes. Now, as a matter of fact, Mr. Kanakanui, didn't the chiefs in some instances go before the land commission and [219—152] obtain awards of ahupuaas which are not mentioned in any mahele between them and the king or the Government?

A. I never came across one. I came across a petition by the chiefs to the land commission to settle house lots but I never came across one where a —konohikis had been awarded them, their land had been divided with the king as for other land than those lands contained in the mahele.

Q. I see.

A. I never come across one. There might have been one I don't know.

Mr. ROBERTSON.—Exactly. That's all.

Mr. LIGHTFOOT.—That's all. We rest.

The COURT.—Any further evidence?

Mr. ROBERTSON.—No, your Honor, no further evidence.

I hereby certify the above and foregoing to be a complete and accurate extension of my shorthand notes of the proceedings had and testimony taken

during the trial of the above-entitled cause.

(Sgd.) JAMES L. HORNER,
Official Reporter.

Land Court.

Filed Thursday, Aug. 14, 1919, at 2:00 o'clock
P. M.

ARTHUR E. RESTARICK,
Registrar.

[Endorsed]: No. 1212. Rec'd and Filed in the
Supreme Court, August 14, 1919, at 2:00 P. M.
J. A. Thompson, Clerk. [220]

In the Supreme Court of the Territory of Hawaii,
October Term, 1919.

No. 1212.

In the Matter of the Petition of the TERRITORY
OF HAWAII to Register and Confirm Its
Title to the AHUPUAA OF KIOLOKU, in
the District of Kau, Island and County of
Hawaii, Territory of Hawaii.

ERROR TO JUDGE OF THE LAND COURT.

Opinion.

Hon. J. T. DE BOLT, Judge.

Argued January 28, 1920, decided March 15, 1920.
COKE, C. J., KEMP AND EDINGS, JJ.

Real Actions—Statute of Limitations Distinguished
From the Common-law Presumption of a Lost
Grant.

There is a marked difference between a title ac-

quired by prescription under the statute of limitations and a title acquired through the medium of the common-law presumption of a lost grant.

Same—Same.

Under the statute of limitations the rule is an arbitrary one and the presumption is conclusive, whereas the common-law presumption is rebuttable. Same—Same.

The statute of limitations cannot be invoked against the State but where sufficient facts are shown the common-law presumption of a lost grant may be indulged in and the rule will be applied as a *presumptio juris et de jure* [221] even as against the State.

Same—Common-law Presumption of a Lost Grant.

Where the evidence is sufficient to apply the common-law presumption of a grant it may also be assumed in the absence of circumstances repelling such conclusion that all that might lawfully have been done to perfect the legal title was in fact done and in the form prescribed by law.

Same—Same.

The doctrine of the common-law presumption of a lost grant may be invoked in favor of the State as well as against it. [222]

OPINION OF THE COURT BY COKE, C. J.

This cause is brought here on a writ of error sued out by the Territory of Hawaii to review numerous rulings of the judge of the land court of the Territory of Hawaii made during the trial of said cause as well as the final decision and decree made and rendered therein. There are in all twenty-five specifications of

error. The controversy is in respect to what is known as the Ahupuaa of Kioloku, District of Kau, island of Hawaii. This ahupuaa contains an area of about 850 acres. In August, 1913, the Territory of Hawaii sought to have its title thereto registered. After a report by the examiner which was favorable to the claim of the Territory notice was served upon adjoining owners and possible claimants as provided by law. The Hutchinson Sugar Plantation Company (hereinafter referred to as the company), the present defendant in error, was the only party appearing to make claim to the property in question. It interposed an answer denying title in the Territory and asserted ownership of the land in fee simple in itself. The trial of the issue thus joined was not commenced until October, 1918.

It is the claim of the Territory that the Ahupuaa of Kioloku was not included in the great mahele of 1848 by which the lands of the Kingdom of Hawaii were supposed to have been partitioned and set apart in severalty to and between the king, the chiefs and the Government, respectively, nor has the Government by any subsequent award or grant conveyed away its title in said ahupuaa. The company asserts title in fee simple in itself under a mahele and land commission award which cannot now be produced and of which no present record can be found but which it claims must be presumed to have been made to the high chiefess Ane Keohokalole and invokes the common law presumption of a grant and attempts to establish its claim of the existence of the grant [223] by secondary evidence.

The facts involved in the controversy are simple. The predominant question is whether under the facts and circumstances shown to exist by the record a grant from the Government to Ane Keohokalole can properly be presumed. As aptly said in the brief of the attorney general: "The whole issue of the case may be summarized in the one question, namely, under the facts and circumstances as shown in the case, will the court presume a grant of Kioloku to Ane Keohokalole?" The judge of the land court found after an able and exhausted review of the evidence as well as of the authorities that a grant from the Government to the company's predecessor in interest must be presumed and that the petitioner, the Territory of Hawaii, had no right, title nor interest whatsoever in or to Kioloku and thereupon dismissed the petition of the Territory.

At the trial before the land court it was established either by evidence or the admission of the parties that Caezar Kapaakea was the father and Ane Keohokalole the mother of David Kalakaua (afterwards King Kalakaua); that as far back as 1861 Ane Keohokalole, through her trustees C. R. Bishop, was collecting rents from the ahupuaa of Kioloku; that Ane Keohokalole died in 1869 leaving surviving her David Kalakaua and three other children; that in 1870 the lands of Ane Keohokalole were partitioned and divided between her children by a deed of partition duly executed and recorded and that by this deed the ahupuaa of Kioloku was set apart to and as the sole property of David Kalakaua; that from that date to the present time Kalakaua

and his successors in interest have held actual, open, continuous and uninterrupted possession of the land in question, using it for such purposes as it was adapted, and that the Hutchinson Sugar Plantation Company succeeded to the rights of Kalakaua by [224] several mesne conveyances. The petitioner has also admitted that the land has been assessed by the several Governments of Hawaii, to wit, the Monarchy, the Provisional Government, the Republic of several Governments of Hawaii, to wit, the Monarchy, the Provisional Government, the Republic of Hawaii and the Territory of Hawaii, and the taxes so assessed have been paid by the successive occupants since 1870 to the present time.

The record herein further discloses that in 1873 David Kalakaua presented a petition to Rufus A. Lyman boundary commissioner for the Island of Hawaii, to have the boundaries of the ahupuaa of Kioloku and other lands settled and adjudicated. It appears from the record of the boundary commissioner that the owners of adjoining lands were notified of the proceedings as required by law and that in response to this notice the then reigning monarch of Hawaii, His Majesty King Lunalilo, owner of one of the adjoining tracts of land, appeared and was represented by J. G. Hoapili, and that the Government, the owner of one of the adjoining tracts of land appeared and was represented by W. T. Martin; that testimony was taken and a judgment defining the boundaries of Kioloku by a survey description was entered; that no objection was made to the proceedings or to the findings of the commissioner either by

King Lunalilo or by the Government. From ancient maps and surveys of lands adjoining Kioloku and of a small Kuleana located within the boundaries of Kioloku as early as 1852 Kioloku was referred to as konohiki land. Konohiki, when used as a noun, designated the person having charge of the land in behalf of the king or chief or other person to whom the ahupuaa had been assigned or awarded, but the word "konohiki" is in common use as an adjective denoting land which is privately owned in contradistinction to "aupuni" or Government land. The classification of the lands in these islands which have been in vogue since the great mahele of 1848 is (1) Government land; (2) crown land; (3) konohiki land, and (4) kuleanas of the [225] common people. In royal patent grants issued about 1860 the ahupuaa of Kioloku was referred to simply as "Kioloku" while other lands in that vicinity which it is conceded were Government lands were referred to as "aupuni."

Mr. Kanakanui, a witness for the Government, testified to having searched the records of the land commission and of the privy council of the former Kingdom, as well as the records of the mahele of 1848, without being able to locate any record of an award or mahele of Kioloku. And it is further shown by the Territory that Kalakaua in his petition filed with the boundary commissioner of the Island of Hawaii to have the boundaries of Kioloku and other ahupuaas adjudicated represented that no award of Kioloku had ever been made to his mother

Ane Keohokalole. The petition referred to is as follows:

“To the Honorable Rufus A. Lyman,
“Commissioner of Boundaries,
“Island of Hawaii.

“The undersigned states, that A. Keohokalole had lands, She did not receive awards from the Land Commissioner to some of her lands; but she still holds said Ahupuaas to this time,

Therefore, herewith apply to settle the boundaries of said lands, according to their names hereunder, thus

| | Ahupuaas | District | Island |
|----|------------|----------|--------|
| 1. | Lililoa | Puna | Hawaii |
| 2. | Nalua | Kau | “ |
| 3. | Kamakamaka | “ | “ |
| 4. | Kapauka 5 | “ | “ |
| 5. | Mohokea | “ | “ |
| 6. | Kioloku | “ | “ |
| 7. | Ilikahi | Kona | “ |

“Property owners adjoining these lands be also called to appear on the day set for action on these lands, before the Land Commisionon.

“Applicant,

“(Sgd.) D. KALAKAUA.

“Honolulu, June 23d, 1873.” [226]

No living witness has been produced who was present at the proceeding before the boundary commisioner and while the statement of Kalakaua in his petition was weighty evidence supporting the claim that no award of Kioloku had been issued to his mother yet the proceedings had upon the petition be-

fore the commissioner strongly refute that assumption. Kalakaua could only have presented and sustained his petition upon the hypothesis that Kioloku had been awarded by the land commissioners or patented or deeded by the king without defined boundaries and that petitioner was at that time the owner of the land, for it was prescribed in the law authorizing the proceedings, to wit, the act of the legislative assembly of the Kingdom approved June 22, 1866, that "All owners of ahupuaas and ilis of land within this Kingdom, whose lands have not been awarded by the land commissioners, patented or conveyed by deed from His Majesty the king, by boundaries decided in such award, patent or deed, are hereby required within five years from the 23d day of August, A. D., 1868, to file with the commissioner of boundaries for the circuit in which the land is situated, and application to have the boundaries of said land decided and certified to by said commissioner," etc. (See also *Re Boundaries of Paunau*, 24 Haw. 546), and therefore great probative force must be attached to the facts that both the king and the Government although being represented at the hearing before the boundary commissioner neither interposed any objection thereto and the hearing proceeded to final determination. What took place before the boundary commissioner was entirely inconsistent with any other theory than that Kalakaua was recognized by the boundary commissioner, the king and the Government as the rightful owner of the property. It is worthy of mention here that of all the lands designated in Kalakaua's petition only

the boundaries of Kioloku were adjudicated. Why were not the boundaries of Lililoa, Nalua, Kamakamaka, Kapauku 5, Mohokea and Ilikahi also determined? The answer is not difficult in the light of the fact that these last-mentioned ahupuaas are shown not to have been the property of Kalakaua. It does not seem [227] unreasonable to assume that these facts were known at the time to the commissioner and those concerned in the proceedings had before him and hence the boundaries of only the property owner by Kalakaua were determined. For it is a fact of record that the boundary commissioner adjudicated the boundaries of Kioloku and issued his certificate thereof to Kalakaua.

The fact that Mr. Kanakanui's search has revealed the existence of no record of an award of Kioloku taken together with the recitation contained in the petition of Kalakaua constitutes the strongest circumstances in the case of the Territory. This evidence, weighty as it may seem, appears to be overcome by other facts forming a combination of circumstances which irresistibly lead to the conclusion that Kioloku had been awarded to Ane Keohokalole, namely, the facts that she was exercising dominion over this property as early as 1861; that in the partition deed of 1870 this land was set apart to Kalakaua and in 1873 the boundaries were settled upon his application with the knowledge and acquiescence of the king and the Government; that from 1870 down to 1913, a period of forty-three years, the several successive Governments of Hawaii recognized Kioloku as the property of Kalakaua and

his successors in interest; that during this entire period no claim whatsoever was asserted by the Government or by any representative thereof to Kioloku, and during the whole period the property was assessed as the property of Kalakaua and his successors in interest and taxes were collected by the Government down to the date of the institution of this proceeding. As said in *Jover vs. Insular Government*, 221 U. S. 623, we would not be justified in assuming that the State would collect taxes on its own property.

Each party has introduced evidence supporting its theory of the case and in this respect there is some conflict in the testimony. The rule is that the findings of the trial judge will not be disturbed by review on writ of error where to do so this court would be called upon to pass upon the credibility of the witnesses or the weight of the evidence. (See 2522 R. L. 1915, as amended by Act 44 [228] S. L. 1919; *Akatsuka vs. McKay*, 24 Haw. 600, 604; *Kaleiheana vs. Keahipaka*, 23 Haw. 169, 171.) The evidence introduced on behalf of the company we deem to be sufficient to sustain the judge of the land court in presuming that a grant of Kioloku was issued to Ane Keohokalole, the grant itself having been lost or for other reasons cannot now be produced.

We will not direct ourselves to the law involved to the end that it may be determined whether in this jurisdiction the common-law presumption of a lost grant may be indulged in as against the Government. This is the vital issue and presents a question of

law never heretofore dealt with by the courts of these Islands.

The doctrine of presumptions, upon which this case must be solved, has called forth various definitions. The Supreme Court of the United States gives the following definition:

"A presumption is an inference as to the existence of a fact not actually known arising from its usual connection with another which is known." Blackstone in speaking of the nature of evidence required to establish a presumption says: "Positive proof is always required where from the nature of the case it appears it might possibly have been had. But next to positive proof, circumstantial evidence, or the doctrine of presumptions, must take its place. For when the fact itself cannot demonstratively be evinced, that which comes nearest to the proof of the fact is the proof of such circumstances as either necessarily or usually attend such facts; and these are called presumptions which are only to be relied upon until the contrary be actually proved." A presumption may be defined as the probable inference which common sense, enlightened by human knowledge and experience, draws from the connection, relation and coincidences of facts and circumstances with each other. When a fact shown in evidence necessarily accompanies the fact in issue it gives rise [229] to a strong presumption as to the existence of the fact to be proved. But if on the other hand the fact shown in evidence only usually accompanies the fact in issue it gives rise merely to a probable presumption of the existence of the fact to be

proved. And Greenleaf in his work on Evidence (16th ed.) section 45, in applying the doctrine of presumption to a grant as against the sovereign, lays down the rule that "though lapse of time does not of itself furnish a conclusive legal bar to the title of the sovereign, agreeably to the maxim '*nullum tempus occurrit regi*,' yet if the adverse claim could have had a legal commencement, juries are instructed or advised to presume such commencement after many years of uninterrupted adverse possession or enjoyment;" and in a note to the section quoted it is said that application of the presumption to cases where a grant was implied against the sovereign has been made in a number of cases cited and that the same principle has been upheld in the United States in favor of individuals as against the State.

Lord Coke recognized the existence of the principle and recites that an act of parliament, a grant from the crown, a deed, and in fact anything which will quiet possession may be presumed from length of time when such act, grant or deed would have been lawfully possessed, made or given, and this presumption is said to be founded on the principle that the law will not presume any man's act illegal but will attribute such possession to a legal origin; that the failure to interrupt such possession by those who had the right arose from their knowledge that it was lawful in its inception and that upon principles of public policy for quieting men in their possession. (Co. Litt. 6). In the case of the Mayor of Kingston upon Hull vs. Horner, Cowp. 102, it was left to

the jury to presume a grant or charter from the crown of certain duties. [230]

In order, however, to properly comprehend the principle of law involved in the case at bar it must be constantly borne in mind that there is a marked distinction between a title acquired by prescription under the statute of limitations and a title acquired through the medium of the common-law presumption of a lost grant or conveyance. Confusion here is the more likely to occur because under the statute of limitations title also vests upon the presumption of a grant. (do Rego vs. Halama, 24 Haw. 750; Warvelle on Ejectment, sec. 418).. But as pointed out in 2 C. J., Sec. 650, pp. 288, 289, under the statute of limitations the rule is an arbitrary one and the presumption is conclusive, whereas the common law presumption is rebuttable. In 1 Jones on Evidence by Horwitz, sec. 77, it is said: "The party relying on his possession may of course call to his aid the statute of limitations where it is applicable and if he relies upon the statute the proofs must show compliance with its provisions. But the statute of limitations does not supersede the common-law presumption, and if this is relied upon possession for less than a period prescribed by the statute may with other cogent circumstances sustain the claim of conveyance or a lost grant. The length of time which brings a given case within the legal presumption of a grant or charter to validate a right long enjoyed is not defined but depends upon its peculiar circumstances. It may be necessary to seek the aid of this presumption in some cases where the statute of limitations

does not apply, as where it is urged against the State."

Counsel for the Territory relies largely upon the decisions of this court in Kahoomana vs. Minister of the Interior, 3 Haw. 635, and Thurston vs. Bishop, 7 Haw. 421. But in these two cases as well as in Minister of the Interior vs. Parke, 4 Haw. [231] 366, and Kunewa vs. Kaanaana, 18 Haw. 252, this court was merely construing the principles involved in the application of the statute of limitations. In the Kahoomana case this court said: "The theory of title by prescription is, that the holding possession of an estate openly and adversely for a certain length of time creates an inference that there was a grant from the adverse claimant or his ancestors or grantors, and the statute of limitations forbids the adverse claimant from setting up against this long-continued possession the fact that there was no grant. But as against the Government a grant cannot be presumed or inferred from long possession in view of the law which required claimants to land to present their claims to the land commission for confirmation or rejection." It is plainly to be seen that the court here was dealing with the law applicable to the statute of limitations and the common-law presumption of a lost grant was not involved in the case. The same might also be said of Thurston vs. Bishop, for it is recited in the opinion in that case, "It is admitted by the defense that no claim for this land on behalf of Lot Kamehameha was presented to the land commission according to law." Of course the presumption of a lost grant could not

have been involved in the face of that admission.

One of the earliest American cases wherein the rule was adverted to and *Kingston upon Hull vs. Horner, supra*, was quoted with approval is *Jackson vs. M'Call*, 10 Johns. Rep. 376, delivered by the Supreme Court of New York in 1813. See also *White vs. Loring*, 24 Pick. 319, decided by the Supreme Court of Massachusetts in 1836. The principle was considered at length by the Supreme Court of Vermont in *University of Vermont vs. Reynolds' Exr.*, 3 Vt. 542. We quote from that opinion: "A great variety of cases were read at the argument, and the elementary treatises are full of them, to show that a grant or the [232] extinguishment or surrender of a grant, and, in short, everything which will confirm a long-continued possession, may be presumed; and this not because it is necessary to believe that any such acts were actually done or executed but for the purpose of quieting possession. In cases of prescription this possession is conclusive as to the right. Certain facts being found to exist the right is confirmed as a matter of law and the possession is considered as conclusive of the right, as if a deed or charter was actually produced. There are certain other cases in which the presumption is not considered as altogether a legal inference but must be made by the jury, and yet the court advise or direct the jury to make such presumption. The enjoyment of certain incorporeal hereditaments for the period of twenty years, of adverse, establishes the right to such enjoyment founded on the presumption of a lost grant; but this possession is liable to

be explained. The enjoyment is therefore not an absolute title but may be rebutted. But if the enjoyment was adverse it affords sufficient ground for such presumption. Chancellor Kent says the later English authorities give to this presumption the most unshaken stability and they say it is conclusive evidence of right. Judge Story, in the case of Tyler vs. Wilkinson, considers it in this light and says that this presumption may go to the extinguishment of a right in various ways as well as by grant.

* * * Thus a grant of land may be presumed as well as a grant of a fishery or common or way, and many cases of this kind are to be found. * * * From comparing these cases * * * it may be inferred that where there has been a long-continued possession which in its origin was or would have been unlawful unless there had been a grant; or if the origin of such possession cannot be accounted for without considering it either as unlawful or also lawful by virtue of a grant the court will [233] not infer that the possession was unlawful but direct the jury to presume such grant or anything which will confirm the possession. But if the original possession was consistent with the fact of there having been no grant, then although the possession may have been ever so long it will be left to a jury to say whether they believe such grant has been made and they must determine according to the weight of the evidence. * * * And where there has been a settlement and a possession for a long time, although no other grant or charter is produced under which such settlement and possession commenced, it may

and ought to be presumed that the charter under which no claim had been asserted had been abandoned or surrendered and either an antecedent or subsequent grant made to the inhabitants who are in the actual occupancy of their lands." The common-law presumption is one of policy as well as of convenience and necessary for the peace and security of society. (*Fletcher vs. Fuller*, 120 U. S. 534.) It will be sufficient ground for the presumption to show that by legal possibility a grant might have issued, and this appearing it may be assumed in the absence of circumstances repelling such conclusion that all that might lawfully have been done to perfect the legal title was in fact done and in the form prescribed by law." *Williams vs. Donell*, 2 Head, 695, quoted with approval in *Fletcher vs. Fuller*, *supra*. Here it may be mentioned that the presumption may be invoked in favor of the State as well as against it. *Nelson vs. Fleming*, 56 Ind. 310, 322.

The doctrine of the common-law presumption of a grant as against the sovereign was dealt with at length by the Supreme Court of the United States in *United States vs. Chaves*, 159 U. S. 452, and again in *United States vs. Chaves*, 175 U. S. 509. In the Chaves case the court said: "The principle upon which this doctrine rests is one of general jurisprudence and is recognized [234] in the Roman law and the codes founded thereon. * * * It is the general rule of American law that a grant will be presumed upon proof of an adverse, exclusive and uninterrupted possession for twenty years, and that such rule will be applied as a *presumptio juris et de*

jure whenever by possibility a right may be acquired in any manner known to the law. * * * Nothing, it is true, can be claimed by prescription which owes its origin to, and can only be had by, matter of record; but lapse of time, accompanied by acts done or other circumstances, may warrant the jury in presuming a grant or title by record. Thus also, though lapse of time does not of itself furnish a conclusive bar to the title of the sovereign, agreeably to the maxim *nullum tempus occurrit regi*, yet if the adverse claim could have had a legal commencement, juries are advised or instructed to presume such commencement after many years of uninterrupted possession or enjoyment. Accordingly royal grants have been thus found by the jury, after an indefinitely long-continued peaceful enjoyment accompanied by the usual acts of ownership." In the Chavez case two cases were covered in the one opinion, the same being cases Nos. 38 and 39. Referring to case No. 39 the court said: "The archives referred to and the documentary evidence are the same as in No. 38, except there is no grant." The opinion then proceeded to deal mainly with the principle involved in case No. 39. The land involved is situated in New Mexico and the petitioner claimed ownership through the medium of a lost Mexican grant issued long prior to the cession of the territory embracing New Mexico to the United States by Mexico by virtue of the treaty of Guadalupe Hidalgo in 1848. No original grant nor any record thereof could be produced. The opinion then proceeds: "Upon a long and uninterrupted possession the law bases presump-

tions as sufficient [235] for legal judgment in the absence of rebutting circumstances, as formal instruments or records of articulate testimony. Not that formal instruments or records are unnecessary, but it will be presumed that they once existed and have been lost. The inquiry then recurs, do such presumptions arise in this case and do they solve its questions? * * * We think there can be but one conclusion in this case. The possession of the land began in wrong or began in right. If in wrong it must be shown. The maxims of the law declare the other way. * * * Back to Clement Gutierrez, therefore, a continuous possession is established by admission and by testimony not contradicted. Back beyond the period of living memory and beyond that period the title needs no inquiry for its validity and repose." In United States vs. Pendell, 185 U. S. 189, the Chaves and the Chavez cases are cited with approval, the court further saying: "The evidence is sufficient not only to presume a grant but to presume any other matter which would have occurred in order to render the grant a perfectly valid one."

The principle involved was, therefore, recognized and applied in England as early as the time of Lord Coke. It has found ingraftment into the Roman civil law. It has had the repeated sanction of the Supreme Court of the United States as well as of the state courts and at no time has it been repudiated by the courts of Hawaii. Hence it must be considered the law of the land.

We have examined all of the assignments of error and find none of them sustained by the record. The decree below is affirmed.

JAMES L. COKE,
S. B. KEMP,
W. S. EDINGS.

J. LIGHTFOOT,
First Deputy Attorney General, for Plaintiff in Error.

A. G. M. ROBERTSON,
(Robertson & Olson on the Brief) for Defendant in Error.

[Endorsed]: No. 1212. Supreme Court, Territory of Hawaii. October Term 1919. In the Matter of the Petition of the Territory of Hawaii to Register and Confirm Its Title to the Ahupuaa of Kioloku in the District of Kau, Island and County of Hawaii, Territory of Hawaii. Opinion. Filed March 15, 1920, at 1:52 P. M. J. A. Thompson, Clerk. [236]

In the Supreme Court of the Territory of Hawaii.

No. 1212.

LAND COURT PETITION No. 283.
In the Matter of the Petition of the TERRITORY OF HAWAII to Register and Confirm Its Title to the AHUPUAA OF KILOKU in the District of Kau, Island and County of Hawaii, Territory of Hawaii.

Judgment.

The above-entitled cause having come on for hearing in this court upon a writ of error to the Land Court of the Territory of Hawaii, and this court having heard the parties and being fully informed in the premises, and having rendered its opinion on the 15th day of March, 1920;

THEREFORE, for the reasons stated in said opinion, it is ordered and adjudged that the decree of the Land Court of the Territory of Hawaii entered in said cause on the 4th day of February, 1919, dismissing the petition of the Territory of Hawaii, be, and the same is hereby affirmed.

Dated, Honolulu, T. H., March 18th, 1920.

[Seal]

BY THE COURT.

(Sgd.) J. A. THOMPSON,
Clerk.

O. K. as to form.

(Sgd.) J. LIGHTFOOT,
Acting Attorney General.

[Endorsed]: No. 1212. Supreme Court Territory of Hawaii. In the Matter of the Petition of the Territory of Hawaii to Register and Confirm Its Title to the Ahupuaa of Kioloku in the District of Kau, Island and County of Hawaii, Territory of Hawaii. Judgment. Filed March 18, 1920, at 2:50 P. M. J. A. Thompson, Clerk. [237]

In the United States Circuit Court of Appeals for
the Ninth Circuit.

In the Matter of the Petition of the TERRITORY
OF HAWAII to Register and Confirm Its
Title to the AHUPUAA OF KIOLOKU, in
the District of Kau, Island and County of
Hawaii, Territory of Hawaii.

Petition for Allowance of Appeal.

To the Honorable the Chief Justice of the Supreme
Court of the Territory of Hawaii:

The Territory of Hawaii, appellant herein, deeming
itself aggrieved by the decision and judgment
of the Honorable Supreme Court of the Territory
of Hawaii in said cause affirming the judgment of
the Land Court of the Territory of Hawaii, which
judgment of the Supreme Court of the Territory of
Hawaii was entered and filed on the 18th day of
March, 1920, comes now by Harry Irwin, Attorney
General of the Territory of Hawaii, its attorney,
and hereby petitions said Supreme Court of the
Territory of Hawaii for an order allowing the
Territory of Hawaii to prosecute an appeal and
have the same allowed and issued from the United
States Court of Appeals for the Ninth Circuit to
the said Supreme Court of the Territory of Hawaii,
under and according to the laws of the United
States in that behalf made and provided, and that
a transcript of the record, proceedings [238]
and documentary exhibits upon which said judg-
ment was made, duly authenticated, may be sent to

said United States Circuit Court of Appeals for the Ninth Circuit;

And in this behalf your petitioner, the said Territory of Hawaii, shows that the amount involved, exclusive of costs, exceeds the value of Five Thousand Dollars (\$5,000.00).

Dated at Honolulu, Territory of Hawaii, this 28th day of May, 1920.

THE TERRITORY OF HAWAII.

(Signed) HARRY IRWIN,

By HARRY IRWIN,

Attorney General of the Territory of Hawaii.

(Signed) J. LIGHTFOOT,

J. LIGHTFOOT,

First Deputy Attorney General, of Counsel.

Affidavit of Harry Irwin.

United States of America,
Territory of Hawaii,—ss.

Harry Irwin, being first duly sworn, on oath deposes and says: That he is the duly appointed, qualified and acting Attorney General of the Territory of Hawaii; that he has read the foregoing Petition and knows the contents thereof and that the matters and things therein set forth are true of his own knowledge; and further, that the amount involved in the cause aforesaid, exclusive of costs, exceeds the value of Five Thousand Dollars (\$5,000.00).

(Signed) HARRY IRWIN,
Attorney General of the Territory of Hawaii.

Subscribed and sworn to before me this 28th day of May, A. D. 1920.

[Notarial Seal]

(Signed) DOROTHY M. DUNNE,
Notary Public, First Judicial Circuit, Territory of
Hawaii. [239]

Due service of the above Petition for Allowance of Appeal and a receipt of a true copy thereof, this 29th day of May, 1920, is hereby admitted.

(Signed) ROBERTSON, CASTLE &
OLSON,

Attorneys for Hutchinson Sugar Plantation Company, Limited, Appellee. [240]

[Endorsed]: No. 1212. In the United States Circuit Court of Appeals for the Ninth Circuit. In the Matter of the Petition of the Territory of Hawaii to Register and Confirm Its Title to the Ahupuaa of Kioloku, in the District of Kau, Island and County of Hawaii, Territory of Hawaii. Petition for Allowance of Appeal. Filed June 1, 1920, at 2:30 P. M. J. A. Thompson, Clerk Supreme Court of Hawaii. [241]

In the United States Circuit Court of Appeals for
the Ninth Circuit.

In the Matter of the Petition of the TERRITORY
OF HAWAII to Register and Confirm Its
Title to the AHUPUAA OF KILOKU, in
the District of Kau, Island and County of
Hawaii, Territory of Hawaii.

Assignment of Errors.

And now comes the Territory of Hawaii, appellant above named, by Harry Irwin, Attorney General of the Territory of Hawaii, and says that in the record and proceedings in the above-entitled cause, in the Supreme Court of the Territory of Hawaii, there is manifest error to the prejudice of the said appellant, in this, to wit:

First. The said Supreme Court of the Territory of Hawaii erred in rendering, entering and filing its decision affirming the decree of the Land Court of the Territory of Hawaii, which said decision of said Supreme Court of the Territory of Hawaii was filed in said cause on the 15th day of March, 1920, and which said decree of the said Land Court was entered and filed on the 4th day of February, 1919.

Second. The said Supreme Court of the Territory of Hawaii erred in rendering and filing judgment affirming the decree of the Land Court of the Territory of Hawaii, [242] which said judgment of said Supreme Court of the Territory of Hawaii was filed in said cause on the 18th day of March, 1920, and which said decree of said Land Court was entered and filed on the 4th day of February, 1919.

Third. The Supreme Court of the Territory of Hawaii erred in not reversing the decree of said Land Court of the Territory of Hawaii, which said decree was entered and filed in said Land Court on the 4th day of February, 1919.

Fourth. That the said Supreme Court of the Territory of Hawaii erred in not holding and in not

entering judgment in said cause in favor of said appellant and against the Hutchinson Sugar Plantation Company, Limited.

Fifth. That said Supreme Court of the Territory of Hawaii erred in holding and deciding that the doctrine of the common-law presumption of a lost grant may be invoked in favor of the state as well as against it.

Sixth. The said Supreme Court of the Territory of Hawaii erred in holding and deciding as follows:

“No living witness has been produced who was present at the proceedings before the Boundary Commissioner, and while the statement of Kalakaua in his petition was weighty evidence supporting the claim that no award of Kioloku had been issued to his mother, yet the proceedings had upon the petition before the Commissioner strongly refute that assumption.”

Seventh. The Supreme Court of the Territory of Hawaii erred in holding and deciding as follows:

“Clear probative force must be attached to the facts that both the king and the Government, although being represented at the hearing before the Boundary Commissioner, neither interposed any objection thereto, and the hearing proceeded to final determination.” [243]

Eighth. The Supreme Court of the Territory of Hawaii erred in holding and deciding as follows:

“The fact that Mr. Kanakanui’s search has revealed the existence of no record of an award

of Kioloku taken together with the recitation contained in the petition of Kalakaua constitutes the strongest circumstances in the case of the Territory. This evidence, weighty as it may seem, appears to be overcome by other facts forming a combination of circumstances which irresistibly lead to the conclusion that Kioloku had been awarded to Ana Keohokalole, namely, the facts that she was exercising dominion over this property as early as 1861; that in the partition deed of 1870 this land was set apart to Kalakaua and in 1873 the boundaries were settled upon his application with the knowledge and acquiescence of the king and the government; that from 1870 down to 1913, a period of forty-three years, the several successive governments of Hawaii recognized Kioloku as the property of Kalakaua and his successors in interest; that during this entire period no claim whatsoever was asserted by the government or by any representative thereof to Kioloku, and during the whole period the property was assessed as the property of Kalakaua and his successors in interest and taxes were collected by the government down to the date of the institution of this proceeding."

Ninth. The Supreme Court of the Territory of Hawaii erred in holding and deciding as follows:

"The evidence introduced on behalf of the company we deem to be sufficient to sustain the Judge of the Land Court in presuming that a

grant of Kioloku was issued to Ane Keohokalole, the grant itself having been lost or for other reasons cannot now be produced."

Tenth. The Supreme Court of the Territory of Hawaii erred in holding and deciding that in the case of Kahoomana vs. Minister of the Interior, 3 Haw. 635,

"It is plainly to be seen that the Court here was dealing with the law applicable to the statute of limitations and the common law presumption of a lost grant was not involved in the case." [244]

WHEREFORE, the Territory of Hawaii, appellant above named, prays that the judgment of said Supreme Court of the Territory of Hawaii be reversed and set aside and that said Supreme Court of the Territory of Hawaii be ordered to enter judgment for and in favor of the Territory of Hawaii, declaring that it, the said Territory of Hawaii is the sole owner in fee simple absolute of all the lands set forth in the petition for registration of its title to the land of Kioloku, filed in said Land Court, and that the said Hutchinson Sugar Plantation Company, Limited, has no right, title or interest whatsoever in said land.

Dated at Honolulu, Territory of Hawaii, this 29th day of May, 1920.

HARRY IRWIN,
Attorney General of the Territory of Hawaii.

J. LIGHTFOOT,
First Deputy Attorney General, of Counsel.

Due service of the above Assignment of Errors and receipt of a true copy thereof, this 29th day of May, 1920, is hereby admitted.

ROBERTSON, CASTLE & OLSON,
Attorneys for Hutchinson Sugar Plantation Company, Limited, Appellee. [245]

[Endorsed]: No. 1212. In the United States Circuit Court of Appeals for the Ninth Circuit. In the Matter of the Petition of the Territory of Hawaii to Register and Confirm Its Title to the Ahupuaa of Kioloku in the District of Kau, Island and County of Hawaii, Territory of Hawaii. Assignment of Errors. Filed June 1, 1920, at 2:30 P. M. J. A. Thompson, Clerk Supreme Court of Hawaii. [246]

In the United States Circuit Court of Appeals for
the Ninth Circuit.

In the Matter of the Petition of the TERRITORY OF HAWAII to Register and Confirm Its Title to the AHUPUAA OF KILOKU, in the District of Kau, Island and County of Hawaii, Territory of Hawaii.

Order Allowing Appeal.

Upon reading and filing the foregoing petition for an order allowing appeal, together with an assignment presented therewith of errors alleged to have occurred in the Supreme Court of the Territory of Hawaii and in the proceedings in the trial of said cause prior thereto,

IT IS ORDERED that an appeal be and the same is hereby allowed to the Territory of Hawaii to have reviewed by the United States Circuit Court of Appeals for the Ninth Circuit, the judgment heretofore entered in the above-entitled cause on the 18th day of March, 1920, and the proceedings in the trial of said cause prior thereto.

Dated at Honolulu, Territory of Hawaii, this 29th day of May, 1920.

[Seal] JAMES L. COKE,
Chief Justice of the Supreme Court of the Territory of Hawaii.

Due service of the above order and receipt of a true copy thereof, this 29th day of May, 1920, is hereby admitted.

ROBERTSON, CASTLE & OLSON,
Attorneys for Hutchinson Sugar Plantation Company, Limited, Appellee. [247]

[Endorsed]: No. 1212. In the United States Circuit Court of Appeals for the Ninth Circuit. In the Matter of the Petition of the Territory of Hawaii to Register and Confirm Its Title to the Ahupuaa of Kioloku in the District of Kau, Island and County of Hawaii, Territory of Hawaii. Order Allowing Appeal. Filed June 1, 1920, at 2:30 P. M. J. A. Thompson, Clerk Supreme Court of Hawaii.
[248]

In the United States Circuit Court of Appeals for
the Ninth Circuit.

In the Matter of the Petition of the TERRITORY
OF HAWAII to Register and Confirm Its
Title to the AHUPUAA OF KIOLOKU, in
the District of Kau, Island and County of
Hawaii, Territory of Hawaii.

**Citation on Appeal Returnable to United States
Circuit Court of Appeals.**

The President of the United States to Hutchinson
Sugar Plantation Company, Limited, GREET-
ING:

You are hereby cited and admonished to be and
appear in the United States Circuit Court of Ap-
peals for the Ninth Circuit at San Francisco, State
of California, within thirty (30) days after the date
of this citation, pursuant to an appeal filed in the
clerk's office of the Supreme Court of the Territory
of Hawaii, wherein the Territory of Hawaii is ap-
pellant, and you, the Hutchinson Sugar Plantation
Company, Limited, are appellee, to show cause, if
any there be, why the judgment rendered against
said appellant as in said appeal mentioned, should
not be corrected, and why speedy justice should not
be done to the parties in that behalf. [249]

WITNESS the Honorable EDWARD DOUG-
LASS WHITE, Chief Justice of the Supreme

Court of the United States, this 29th day of May, 1920.

[Seal] JAMES L. COKE,
Chief Justice of the Supreme Court of the Territory of Hawaii.

Due service of the above Citation on Appeal, and receipt of a true copy thereof, this 29th day of May, 1920, is hereby admitted.

ROBERTSON, CASTLE & OLSON,
Attorneys for Hutchinson Sugar Plantation Company, Limited, Appellee. [250]

[Endorsed]: No. 1212. In the United States Circuit Court of Appeals for the Ninth Circuit. In the Matter of the Petition of the Territory of Hawaii to Register and Confirm Its Title to the Ahupuaa of Kioloku in the District of Kau, Island and County of Hawaii, Territory of Hawaii. Citation on Appeal Returnable to United States Circuit Court of Appeals. Filed June 1, 1920, at 2:30 P. M. J. A. Thompson, Clerk Supreme Court of Hawaii. [251]

In the United States Circuit Court of Appeals for the Ninth Circuit.

In the Matter of the Petition of the TERRITORY OF HAWAII, to Register and Confirm Its Title to the AHUPUAA OF KILOKU, in the District of Kau, Island and County of Hawaii, Territory of Hawaii.

Order Permitting Cash Deposit in Lieu of Bond.

IT IS HEREBY ORDERED that the Territory of Hawaii, appellant above named, may deposit the sum of One Hundred Dollars (\$100.00) in lawful money of the United States with J. A. Thompson, Esquire, Clerk of the Supreme Court of the Territory of Hawaii, in lieu of bond as security for costs on said appeal.

Dated at Honolulu, Territory of Hawaii, this 29th day of May, 1920.

[Seal] (Signed) JAMES L. COKE,
Chief Justice of the Supreme Court of the Territory of Hawaii.

Approved:

(Signed) ROBERTSON, CASTLE & OL-
SON,

Attorneys for Appellee.

Due service of the above order and a receipt of a true copy thereof, this 29th day of May, 1920, is hereby admitted.

(Signed) ROBERTSON, CASTLE & OL-
SON,

Attorneys for Hutchinson Sugar Plantation Company, Limited, Appellee. [252]

[Endorsed]: No. 1212. In the United States Circuit Court of Appeals for the Ninth Circuit. In the Matter of the Petition of the Territory of Hawaii, to Register and Confirm Its Title to the Ahupuaa of Kioloku, in the District of Kau, Island and County of Hawaii, Territory of Hawaii.

Order Remitting Cash Deposit in Lieu of Bond.
Filed June 1, 1920, at 2:30 P. M. J. A. Thompson,
Clerk Supreme Court Hawaii. [253]

In the United States Circuit Court of Appeals for
the Ninth Circuit.

In the Matter of the Petition of the TERRITORY
OF HAWAII, to Register and Confirm Its
Title to the AHUPUAA OF KIOLOKU, in
the District of Kau, Island and County of
Hawaii, Territory of Hawaii.

**Order Extending Time to and Including July 21,
1920, to Prepare and Transmit Record.**

Upon the application of counsel for appellant,
and just cause appearing therefor, and pursuant to
Section 1 of Rule 16 of the United States Circuit
Court of Appeals for the Ninth Circuit.

IT IS HEREBY ORDERED that the appellant
and the Clerk of this Court be, and they are hereby
allowed until and including the 21st day of July,
A. D. 1920, within which to prepare and transmit
to the Clerk of the Circuit Court of Appeals for the
Ninth Circuit, at San Francisco, California, the
record in the above-entitled cause on appeal, to-
gether with petition for appeal and assignment of
errors therewith and all other papers as part of
said record.

Dated, Honolulu, Territory of Hawaii, this 15th day of June, A. D. 1920.

[Seal] JAMES L. COKE,
Chief Justice of the Supreme Court, Territory of Hawaii. [254]

[Endorsed]: No. 1212. In the United States Circuit Court of Appeals for the Ninth Circuit. In the Matter of the Petition of the Territory of Hawaii, to Register and Confirm Its Title to the Ahupuaa of Kioloku, in the District of Kau, Island and County of Hawaii, Territory of Hawaii. Order Extending Time for Preparation and Transmission of Record. Received and Filed in the Supreme Court of Hawaii, June 15, 1920, at 9:05 o'clock A. M. J. A. Thompson, Clerk Supreme Court of Hawaii. [255]

In the United States Circuit Court of Appeals for the Ninth Circuit.

In the Matter of the Petition of the TERRITORY OF HAWAII, to Register and Confirm Its Title to the AHUPUAA OF KILOKU, in the District of Kau, Island and County of Hawaii, Territory of Hawaii.

Order Extending Time to and Including September 21, 1920, to Prepare and Transmit Record.

Upon the application of counsel for appellant, and just cause appearing therefor, and pursuant to Section 1 of Rule 16 of the United States Circuit Court of Appeals for the Ninth Circuit.

IT IS HEREBY ORDERED, that the appellant and the clerk of this court be and they are hereby allowed until and including the 21st day of September, A. D. 1920, within which to prepare and transmit to the Clerk of the Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, the Record in the above-entitled cause on appeal, together with petition for appeal and assignment of errors therewith and all other papers as part of said record.

Dated, Honolulu, Territory of Hawaii, this 13th day of July, A. D. 1920.

[Seal] JAMES L. COKE,
Chief Justice of the Supreme Court, Territory of Hawaii. [256]

[Endorsed]: No. 1212. In the United States Circuit Court of Appeals for the Ninth Circuit. In the Matter of the Petition of the Territory of Hawaii, to Register and Confirm Its Title to the Ahupuaa of Kioloku, in the District of Kau, Island and County of Hawaii, Territory of Hawaii. Order Extending Time for Preparation and Transmission of Record. Received and Filed in the Supreme Court, July 13, 1920, at 2:15 o'clock P. M. J. A. Thompson, Clerk Supreme Court of Hawaii.
[257]

In the United States Circuit Court of Appeals for
the Ninth Circuit.

In the Matter of the Petition of the TERRITORY
OF HAWAII, to Register and Confirm Its
Title to the AHUPUAA OF KIOLOKU, in
the District of Kau, Island and County of
Hawaii, Territory of Hawaii.

**Order Extending Time to and Including October 21,
1920, to Prepare and Transmit Record.**

Upon the application of counsel for appellant,
and just cause appearing therefor, and pursuant to
Section 1 of Rule 16 of the United States Circuit
Court of Appeals for the Ninth Circuit.

IT IS HEREBY ORDERED, that the appellant
and the Clerk of this Court be and they are hereby
allowed until and including the 21st day of October,
1920, within which to prepare and transmit to the
Clerk of the Circuit Court of Appeals for the Ninth
Circuit, at San Francisco, California, the record in
the above-entitled cause on appeal, together with
petition for appeal and assignment of errors there-
with, and all other papers as part of said record.

Dated, Honolulu, T. H., this 9th day of September,
A. D. 1920.

[Seal] W. L. EDINGS,
Associate Justice, Supreme Court of the Territory of
Hawaii. [258]

[Endorsed]: No. 1212. In the United States Cir-
cuit Court of Appeals for the Ninth Circuit. In
the Matter of the Petition of the Territory of

Hawaii, to Register and Confirm Its Title to the Ahupuaa of Kioloku, in the District of Kau, Island and County of Hawaii, Territory of Hawaii. Order Extending Time for Preparation and Transmission of Record. Filed September 9, 1920, at 9:45 A. M. J. A. Thompson, Clerk Supreme Court of Hawaii.
[259]

In the United States Circuit Court of Appeals for
the Ninth Circuit.

In the Matter of the Petition of the TERRITORY
OF HAWAII, to Register and Confirm Its
Title to the AHUPUAA OF KILOKU, in
the District of Kau, Island and County of
Hawaii, Territory of Hawaii.

**Amended Praecept for Transcript of Record on Ap-
peal Returnable to the United States Court of
Appeals for the Ninth Circuit.**

To J. A. THOMPSON, Esquire, Clerk of the Su-
preme Court for the Territory of Hawaii:

You will please prepare a transcript of the record in the above-entitled cause, to be filed in the office of the clerk of the United States Circuit Court of Appeals for the Ninth Circuit, and include in said transcript the following papers on file in said cause, to wit:

- (a) Application for Writ of Error, dated July 26, 1920.
- (b) Notice of Application for Writ of Error, dated July 26, 1920.

- (c) Assignment of Errors, dated July 26, 1920.
- (d) Writ of Error, dated July 26, 1920. [260]
- (e) Petition for Registration of Title, being Petition No. 283, filed August 2, 1913.
- (f) Answer of Hutchinson Sugar Plantation Company, dated December 5, 1913.
- (g) Motion for Leave to Reopen Case for the Purpose of Offering further Evidence in the Petition of the Territory, dated December 12, 1918.
- (h) Stipulation as to Agreed Facts, dated December 27, 1918.
 - (i) Decision, filed January 29, 1919.
 - (j) Decree, filed February 4, 1919.
 - (k) Clerk's Minutes of the Proceedings Had.
 - (l) Registered Map referred to in Petition for Registration, filed August 2, 1913.
- (m) Petitioner's Exhibit "A," being certified copy of a portion of Registered Map No. 1409 on file in the office of the Survey Department of Hawaii, the same being entitled "Map of a portion of Kau, District of Hawaii, Scale 2000 feet, Compiled by J. F. Brown, Sept., 1895, principally from surveys by F. S. Lyman."
- (n) Petitioner's Exhibit "B," being certified copy of a portion of Registered Map No. 1455 on file in the office of the Survey Department of Hawaii, the same being entitled "Map of a Section of Kau, Hawaii, from Kiolakaa to Punaluu, Map and Survey by M. P. Monsarrat, 1887, Scale 1000 ft. 1 inch."
- (o) Petitioner's Exhibit "C," being certified copy of a portion of Registered Map No. 1807 on

file in the office of the Survey Department of Hawaii, the same being entitled "Map of a Portion of Kau, Hawaii, from Punaluu to Kalae from surveys by M. D. Monsarrat, J. S. Emerson and F. S. Lyman. Scale 1:24000. Map by F. S. Dodge, 1894."

(p) Petitioner's Exhibit "D," (for Identification) being certified copy of list of unassigned lands occupied by private parties without any title from the Government.

(q) Petitioner's Exhibit "E" (For Identification), being certified copy of list of lands omitted in the "Mahele" of 1848, Island of Hawaii, District of Hilo. [261]

(r) Petitioner's Exhibit "F," being certified copy of pages 9 and 10 of Mahele Book.

(s) Contestant's Exhibit 1, being copy of letter dated January 9, 1888, by W. D. Alexander, Surveyor-General to His Excellency L. A. Thurston, Minister of the Interior; attached are eight (8) typewritten sheets showing "Area of Unassigned Lands," "Area of Government Grants Within Unassigned Lands," "Unassigned Lands Surrendered to the Government by the Crown Commissioners," "Unassigned Lands in the Possession of the Government," and "Unassigned Lands Sold by the Government."

(t) Contestant's Exhibit 9, being tracing of Map of Kaunamano, Kioloku, etc.

(u) Contestant's Exhibit 10, being certified copy of portion of Registered Map No. 575, on file in the Survey Department of Hawaii, the same being entitled "Map of a portion of Kau District, Island

of Hawaii, showing Ahupuaas, Grants, and Unsold Government Lands, Compiled by (1879) F. S. Lyman, Hilo, August, '79."

(v) Contestant's Exhibit 11, being certified copy of Deed of Trust, A. Keohokalole and husband to Chas. R. Bishop, Trustee, dated June 14, 1860, in Book 13, pp. 58-61.

(w) Contestant's Exhibit 12, being certified copy of Deed of Partition, dated July 1, 1870, L. M. Kapaakea, et als., with Lydia K. Dominis, in Book 30, pp. 364-367.

(x) The transcript of the testimony taken.

(y) Decision of the Supreme Court of the Territory of Hawaii, dated March 15, 1920.

(z) Judgment of the Supreme Court of the Territory of Hawaii, dated March 18, 1920.

You will please annex to and transmit with the record the following:

(1) The original petition for order allowing appeal from the United States Circuit Court of Appeals for the Ninth Circuit.

(2) The original Assignment of Errors on said appeal.

(3) The original Order Allowing Appeal. [262]

(4) The original Citation with acknowledgment of service.

(5) The original Order Permitting Cash Deposit in Lieu of Bond.

(6) Your Return of the Citation under the seal of the Supreme Court of the Territory of Hawaii; and

(7) Your certificate under seal, stating in de-

tail the cost of the record and by whom the same was paid.

Dated at Honolulu, Territory of Hawaii, this 14th day of September, A. D. 1920.

(Signed) HARRY IRWIN,

Attorney General of the Territory of Hawaii.

(Signed) LIGHTFOOT,

First Deputy Attorney General,

Of Counsel. [263]

Due service of the above Amended Praeclipe for Transcript of Record and receipt of a true copy thereof, this —— day of September, 1920, is hereby admitted.

Attorneys for Hutchinson Sugar Plantation Co., Ltd., Appellee.

I hereby certify that a copy of the foregoing Amended Praeclipe for Transcript of Record was served on Messrs. Robertson, Castle & Olson, Attorneys for Hutchinson Sugar Plantation Company, Ltd., this 15th day of September, A. D. 1920.

MILDRED QUINN WHITE,

Clerk. Office of the Attorney General. [264]

[Endorsed]: No. 1212. In the United States Circuit Court of Appeals for the Ninth Circuit. In the Matter of the Petition of the Territory of Hawaii, to Register and Confirm Its Title to the Ahupuaa of Kioloku, in the District of Kau, Island and County of Hawaii, Territory of Hawaii.

Amended Praecepse. Filed September 15, 1920, at 3:55 P. M. J. A. Thompson, Clerk Supreme Court Hawaii. [265]

In the Supreme Court of the Territory of Hawaii.

In the Matter of the Petition of the TERRITORY
OF HAWAII to Register and Confirm Its
Title to the AHUPUAA OF KILOKU in
the District of Kau, Island and County of
Hawaii, Territory of Hawaii.

Order for the Transmission of Original Exhibits.

To JAMES A. THOMPSON, Esquire, Clerk of the
Supreme Court of the Territory of Hawaii:

You are hereby authorized and directed in connection with the writ of error from the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled suit, to transmit as part of the record required by the praecipe of the plaintiff in error, the following exhibits and maps, upon its counsel undertaking to return them to the files of this Court, viz.:

(1) Registered Map referred to in Petition for Registration, filed August 2, 1913.

(2) Petitioner's Exhibit "A," being certified copy of a portion of Registered Map No. 1409 on file in the office of the Survey Department of Hawaii, the same being entitled "Map of a portion of Kau, District of Hawaii, Scale 2,000 feet, Compiled by J. F. Brown, Sept. 1895, principally from surveys by F S. Lyman." [266]

(3) Petitioner's Exhibit "B," being certified copy of a portion of Registered Map No. 1455 on file in the office of the Survey Department of Hawaii, the same being entitled "Map of a Section of Kau, Hawaii, from Kiolakaa to Punaluu, Map and Survey by M. D. Monsarrat, 1887, Scale 1,000 ft. 1 inch."

(4) Petitioner's Exhibit "C," being certified copy of a portion of Registered Map No. 1807 on file in the office of the Survey Department of Hawaii, the same being entitled "Map of a portion of Kau, Hawaii, from Punaluu to Kalae from surveys by M. D. Monsarrat, J. S. Emerson and F. S. Lyman. Scale 1: 24000. Map by F. S. Dodge, 1894."

(5) Petitioner's Exhibit "D," (For Identification) being certified copy of list of unassigned lands occupied by private parties without any title from the Government.

(6) Petitioner's Exhibit "E" (For Identification), being certified copy of list of lands omitted in the Mahele of 1848, Island of Hawaii, District of Hilo.

(7) Petitioner's Exhibit "F," being certified copy of pages 9 and 10 of Mahele Book.

(8) Contestant's Exhibit 1, being a copy of letter dated January 9, 1888, by W. D. Alexander, Surveyor-General to His Excellency L. A. Thurston, Minister of the Interior; attached are eight (8) typewritten sheets showing "Area of Unassigned Lands," "Area of Government Grants within Unassigned Lands," "Unassigned Lands Sur-

rendered to the Government by the Crown Commissioners," "Unassigned Lands in the possession of the Government," and "Unassigned Lands sold by the Government."

(9) Contestant's Exhibit 9, being Tracing of Map of Kaunamano, Kioloku, etc.

(10) Contestant's Exhibit 10, being certified copy of portion of Registered Map No. 575, on file in the Survey Department of Hawaii, the same being entitled "Map of a Portion of Kau District, Island of Hawaii, showing Ahupuaas, Grants, and Unsold Government Lands, Compiled by (1879) F. S. Lyman, Hilo, Aug. '79."

(11) Contestant's Exhibit 11, being certified copy of Deed of Trust, A. Keohokalole and husband to Chas. R. Bishop, Trustee, dated June 14, 1860, in Book 13, pp. 58-61. [267]

(12) Contestant's Exhibit 12, being certified copy of Deed of Partition, dated July 1, 1870, L. M. Kapaakea, et als. with Lydia K. Dominis, in Book 30, pp. 364-367.

Dated, Honolulu, T. H., this 16th day of September, A. D. 1920.

[Seal] SUPREME COURT, TERRITORY
OF HAWAII.

JAMES L. COKE,

Chief Justice of the Supreme Court of the Territory of Hawaii. [268]

[Endorsed]: No. 1212. In the Supreme Court of the Territory of Hawaii. In the Matter of the Petition of the Territory of Hawaii to Register and Confirm Its Title to the Ahupuaa of Kioloku in the

District of Kau, Island and County of Hawaii,
Territory of Hawaii. Order for the Transmission
of Original Exhibits. Filed September 16, 1920, at
8:30 A. M. J. A. Thompson, Clerk Supreme Court
of Hawaii. [269]

In the Supreme Court of the Territory of Hawaii.

In the Matter of the Petition of the TERRITORY
OF HAWAII to Register and Confirm Its
Title to the AHUPUAA OF KIOLOKU in
the District of Kau, Island and County of
Hawaii, Territory of Hawaii.

Undertaking to Return Original Exhibits.

To JAMES A. THOMPSON, Esquire, Clerk of the
Supreme Court of the Territory of Hawaii:

We hereby undertake to return to the files of the
Supreme Court of the Territory of Hawaii the fol-
lowing original exhibits and maps, sent to the
United States Circuit Court of Appeals for the
Ninth Circuit in accordance with the order of the
Chief Justice of the Supreme Court of the Terri-
tory of Hawaii:

- (1) Registered Map referred to in Petition for Registration, filed August 2, 1913.
- (2) Petitioner's Exhibit "A," being certified copy of a portion of Registered Map No. 1409 on file in the office of the Survey Department of Hawaii, the same being entitled "Map of a Portion of Kau, District of Hawaii, Scale 2000 feet, Com-

piled by J. F. Brown, Sept. 1895, principally from surveys by F. S. Lyman."

(3) Petitioner's Exhibit "B," being certified copy of a portion of Registered Map No. 1455 on file in the office of the Survey Department of Hawaii, the same being entitled "Map of a Section of Kau, Hawaii, from Kiolakaa to Punaluu, Map and Survey by M. D. Monsarrat, 1887, Scale 1000 ft. 1 inch." [270]

(4) Petitioner's Exhibit "C," being certified copy of a portion of Registered Map No. 1807 on file in the office of the Survey Department of Hawaii, the same being entitled "Map of a Portion of Kau, Hawaii, from Punaluu to Kalae from surveys by M. D. Monsarrat, J. S. Emerson and F. S. Lyman. Scale 1: 24000. Map by F. S. Dodge 1894."

(5) Petitioner's Exhibit "D" (For Identification), being certified copy of purported list of unassigned lands occupied by private parties without any title from the Government.

(6) Petitioner's Exhibit "E" (For Identification), being certified copy of purported list of lands omitted in the "Mahele" of 1848, Island of Hawaii, District of Hilo.

(7) Petitioner's Exhibit "F," being certified copy of pages 9 and 10 of Mahele Book.

(8) Contestant's Exhibit 1, being copy of letter dated January 9, 1888, by W. D. Alexander, Surveyor-General to His Excellency L. A. Thurston, Minister of the Interior; attached are eight (8) typewritten sheets showing "Area of Un-

assigned Lands," "Area of Government Grants within Unassigned Lands," "Unassigned Lands Surrendered to the Government by the Crown Commissioners," "Unassigned Lands in the Possession of the Government," and "Unassigned Lands Sold by the Government."

(9) Contestant's Exhibit 9, being tracing of Map of Kaunamano, Kioloku, etc.

(10) Contestant's Exhibit 10, being certified copy of portion of Registered Map No. 575, on file in the Survey Department of Hawaii, the same being entitled "Map of a Portion of Kau District, Island of Hawaii, showing Ahupuaas, Grants, and Unsold Government Lands, Compiled by (1879), F. S. Lyman, Hilo, Aug. '79."

(11) Contestant's Exhibit 11, being certified copy of Deed of Trust, A. Keokahokalo and husband, to Chas. R. Bishop, Trustee, dated June 14, 1860, in Book 13, pp. 58-61. [271]

(12) Contestant's Exhibit 12, being certified copy of Deed of Partition, dated July 1, 1870, L. M. Kapaakea, et als. with Lydia K. Dominis, in Book 30, pp. 364-367.

Dated, Honolulu, T. H., September 16, 1920.

HARRY IRWIN,
Attorney-general of Hawaii.

J. LIGHTFOOT,
First Deputy Attorney-general. [272]

[Endorsed]: No. 1212. In the Supreme Court of the Territory of Hawaii. In the Matter of the Petition of the Territory of Hawaii to Register and Confirm Its Title to the Ahupuaa of Kioloku in the

District of Kau, Island of Hawaii, County of Hawaii, Territory of Hawaii. Undertaking to Return Original Exhibits. Filed September 16, 1920, at 11:55 A. M. J. A. Thompson, Clerk Supreme Court of Hawaii. [273]

In the Supreme Court of the Territory of Hawaii.

In the Matter of the Petition of the TERRITORY OF HAWAII to Register and Confirm Its Title to the AHUPUAA OF KIOLOKU in the District of Kau, Island and County of Hawaii, Territory of Hawaii.

Certificate of Clerk to the Transcript of Record.

Territory of Hawaii,
City and County of Honolulu,—ss.

I, JAMES A. THOMPSON, Clerk of the Supreme Court of the Territory of Hawaii, by virtue of the petition for order allowing appeal, herein filed, a copy whereof is attached to the foregoing transcript of record, being pages 238 to 241, both inclusive, and in pursuance to the Amended Prae-
cipe to me directed, a copy whereof is hereto attached, being pages 260 to 265, both inclusive, DO HEREBY TRANSMIT to the Honorable United States Circuit Court of Appeals for the Ninth Circuit the foregoing transcript of record, being pages 1 to 237, both inclusive, pages 252 to 253, both inclusive, and pages 270 to 273, both inclusive, AND DO HEREBY CERTIFY the same to be full, true and correct copies of the pleadings, record, proceed-

ings, transcript of testimony, exhibits, minutes, decisions and decrees which are on file and of record in the office of the Clerk of the Supreme Court of the Territory of Hawaii, in a cause entitled "In the Matter of the Petition of the Territory of Hawaii to Register and Confirm Its Title to the Ahupuaa of Kioloku, in the District of Kau, Island and County of Hawaii, Territory of Hawaii," Numbered 1212.

I DO FURTHER CERTIFY that the original Assignment of Errors, dated and filed June 1, 1920, and admission of service of copy thereof, being pages 242 to 246, both inclusive, the original Order Allowing Appeal, filed June 1, 1920, with acknowledgment of service of copy thereof, being pages 247 to 248, both inclusive, the original Citation on Appeal, filed June 1, 1920, with acknowledgment of service of copy thereof, being pages 249 to 251, both inclusive, the original order filed June 15, 1920, extending time to and including July 21, 1920, for the preparation and transmission of record, being pages 254 to 255, both inclusive, the original Order filed July 13, 1920, extending time to and including September 21, 1920, for the preparation and transmission of record, being pages 256 to 257, both inclusive, and the original Order filed September 9, 1920, extending time to and including October 21, 1920, for the preparation and transmission of record, being pages 258 to 259, both inclusive of the foregoing transcript of record are hereto attached and herewith returned;

I FURTHER CERTIFY that pursuant to an order for the transmission of original exhibits, herein filed, a copy whereof is hereto attached, being pages 266 to 269, both inclusive, I have included and do transmit herewith as part of the record in the foregoing entitled cause, the following original exhibits, viz.: [274]

(1) Registered Map referred to in the Petition for Registration, filed August 2, 1913;

(2) Petitioner's Exhibit "A," certified copy of a portion of Registered Map No. 1409 on file in the office of the Survey Department of Hawaii, the same being entitled "Map of a portion of Kau, District of Hawaii, Scale 2000 ft.=1 inch compiled by J. F. Brown, Sept. 1895, principally from surveys by J. S. Lyman";

(3) Petitioner's Exhibit "B," certified copy of a portion of Registered Map No. 1455 on file in the office of the Survey Department of Hawaii, the same being entitled "Map of a Section of Kau, Hawaii, from Kiolokaa to Punaluu, Map and survey by M. D. Monsarrat, 1887, Scale 1000 ft. 1 inch";

(4) Petitioner's Exhibit "C," certified copy of a portion of Registered Map No. 1807 on file in the office of the Survey Department of Hawaii, the same being entitled "Map of a portion of Kau, Hawaii, from Punaluu to Kalae from surveys by M. D. Monsarrat, J. S. Emerson and F. S. Lyman, Scale 1: 24000 Map by F. S. Dodge 1894";

(5) Petitioner's Exhibit "D" (for Identification) being certified copy of list of unassigned lands

occupied by private parties without any title from the Government;

(6) Petitioner's Exhibit "E" (for Identification) being certified copy of list of lands omitted in the "Mahele" of 1848 Island of Hawaii, District of Hilo;

(7) Petitioner's Exhibit "F," certified copy of pages 9 and 10 of Mahele Book;

(8) Contestant's Exhibit 1, certified copy of Letter dated January 9, 1888, by W. D. Alexander, Surveyor General to His Ex. L. A. Thurston, Minister of the Interior, attached are eight (8) typewritten sheets showing "Area of Unassigned Lands," "Area of Government Grants within Unassigned Lands," "Unassigned Lands Surrendered to the Government by the Crown Commissioners," "Unassigned Lands in the possession of the Government," and "Unassigned Lands sold by the Government";

(9) Contestant's Exhibit 9, Tracing, Map of Kaunamano, Kioloku, etc.;

(10) Contestant's Exhibit 10, certified copy of portion of Registered Map No. 575 on file in the Survey Department of Hawaii, the same being entitled "Map of portion of Kau District, Island of Hawaii, showing Ahupuaas, Grants and Unsold Government Lands—Compiled by (1879) F. S. Lyman, Hilo, Aug. 79'";

(11) Contestant's Exhibit 11, certified copy of Deed of Trust, A. Keohokalole and husband to Charles R. Bishop, Trustee, dated June 14, 1860, in book 13, pages 58-61; and [275]

(12) Contestant's Exhibit 12, certified copy of Deed of Partition, dated July 1, 1870, L. M. Kapaakea et als., with Lydia K. Dominis, in book 30, pages 364-367.

I also certify that the cost of the foregoing transcript of record is \$68.25, and that said amount has been paid by the appellant herein.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of the Supreme Court of the Territory of Hawaii, at Honolulu, City and County of Honolulu, this 28th day of September, A. D. 1920.

[Seal] JAMES A. THOMPSON,
Clerk Supreme Court, Territory of Hawaii. [276]

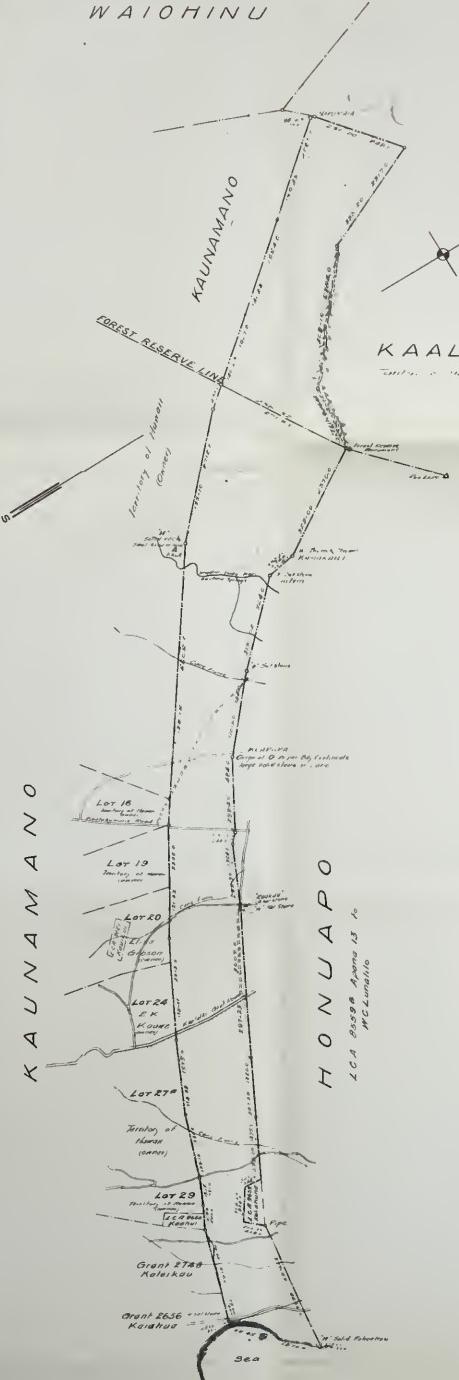
[Endorsed]: No. 3588. United States Circuit Court of Appeals for the Ninth Circuit. In the Matter of the Petition of the Territory of Hawaii to Register and Confirm Its Title to the Ahupuaa of Kioloku, in the District of Kau, Island and County of Hawaii, Territory of Hawaii, The Territory of Hawaii, Appellant, vs. Hutchinson Sugar Plantation Company, Limited, Appellee. Transcript of Record. Upon Appeal from the Supreme Court of the Territory of Hawaii.

Filed October 14, 1920.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

WAIOHINU



TERRITORY OF HAWAII
LAND COURT

Map and Description with Petition No. 238
Territory of Hawaii, Petitioner,

Land of Kiolakau, District of Kau, Island of Hawaii.

Beginning at a "W" on rock on a small knoll in lot 1, the true azimuth and distance to "Kalo" Trig Station being 1° 30' 265.0 feet and from this station the true azimuth and distance to Government Survey Trig Station "Kapuna" is 10° 23' 643.0 feet, and running by true azimuths -

1. 135° 10' 232.0 feet along the land of Kaunamano;
2. 140° 25' 192.0 feet along the land of Kaunamano;
3. 141° 25' 1934.0 feet along the land of Kaunamano;
4. 139° 45' 2663.0 feet along the land of Kaunamano;
5. 128° 53' 78.0 feet to a place called Kapuna;
6. 230° 00' 1844.0 feet along the land of Kaalaki;
7. 235° 20' 2472.0 feet along the land of Kaalaki;
8. Thence along the middle of a stream along the land of Kiolakau, the true azimuth and distance being 160° 10' 2785.0 feet;
9. Thence still along the middle of the stream along the land of Kiolakau, the true azimuth and distance being 229° 00' 1842.0 feet; from this point the true azimuth and distance to a Forest Reserve monument is 180° 00' 30.0 feet;
10. 328° 00' 2370.0 feet along the land of Honoupe to a "W" marked in bed rock of gulch at a place called Kekuhau, about 10 feet North of a water hole;
11. 352° 20' 379.0 feet along the land of Honoupe to a "W" on set stone in feet;
12. 315° 05' 1824.0 feet along the land of Honoupe to a "W" on set stone;
13. 310° 50' 1744.0 feet along the land of Honoupe to a "W" on set stone and then to a place called Kapapa; from this point the true azimuth and distance to Government Survey Trig Station Kamewalo is 13 21° 12' 4963.5 feet;

14. 289° 25' 1484.0 feet along the land of Honoupe;
15. 313° 05' 246.0 feet along the land of Honoupe;
16. 285° 30' 1304.0 feet along the land of Honoupe to a "W" on set stone by stone wall; from 1613 point the true azimuth and distance to Government Survey Trig Station is 289° 20' 2461.0 feet and distance to Government Survey Trig Station "Kapuna" is 168° 30' 3328.8 feet;
17. 297° 23' 3607.0 feet along the land of Honoupe;
18. 297° 38' 1230.0 feet along the land of Honoupe;
19. 288° 04' 1273.0 feet along the land of Honoupe;
20. 3° 05' 348.0 feet along L.C.A. 9659 to Kekuhau;
21. 304° 56' 888.0 feet along L.C.A. 9659 to Kekuhau;
22. 200° 35' 429.0 feet along L.C.A. 9659 to Kekuhau to a pipe;
23. 277° 00' 2660.0 feet along the land of Honoupe to a "W" cut in plateau;
24. 277° 00' 127.0 feet along the land of Honoupe to Kekuhau Point, at the sea shore;
25. Thence along the sea shore, the true azimuth and distance being 229° 00' 1842.0 feet;
26. 108° 05' 183.0 feet up Pihana shelf away Grand 2638 to Kekuhau to a "W" on set stone in well;
27. 108° 05' 340.0 feet along Grand 2626 to Kekuhau;
28. 108° 05' 1404.0 feet along Grand 2768 to Kekuhau;
29. 116° 50' 500.0 feet along L.C.A. 9660 to Kekuhau and Lot 29 of the Kaunamano Homesteads;
30. 118° 15' 551.0 feet along Lot 29 of the Kaunamano Homesteads;
31. 109° 15' 1280.0 feet along Lot 278 of the Kaunamano Homesteads;
32. 118° 38' 1035.0 feet along Lot 278 of the Kaunamano Homesteads;
33. 118° 11' 2013.0 feet along Lots 278, 28, and 29 of the Kuunamano Homesteads;
34. 121° 22' 2266.0 feet along Lots 20 and 19 of the Kaunamano Homesteads;
35. 125° 15' 3665.0 feet along Lot 16 of the Kaunamano Homesteads to a point of beginning.

APPROXIMATE ACRES

Compiled from survey and map of
Geo F Wright, and from Govern-
ment Survey records.

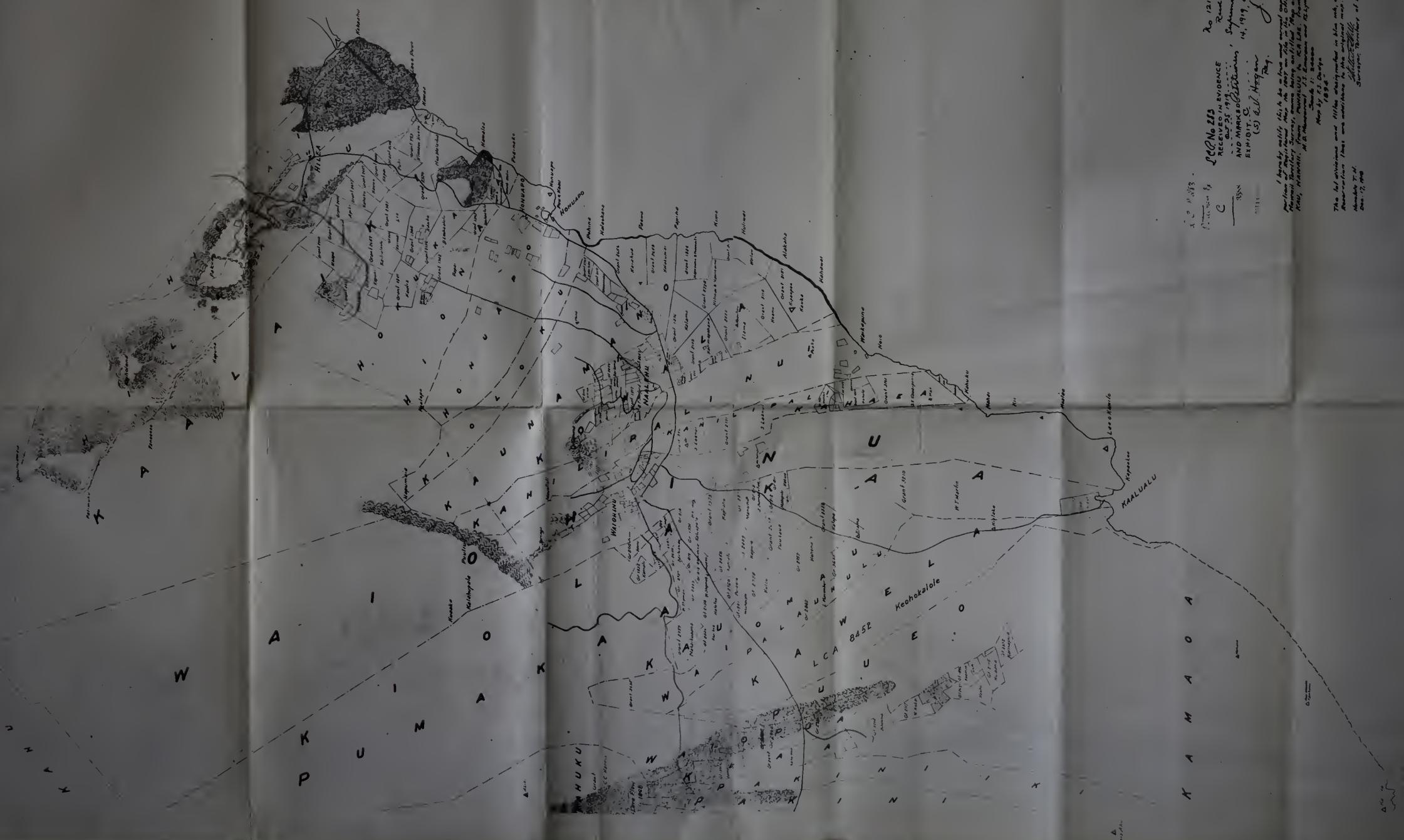
J. C. Goodman,
Government Surveyor.

The above placed description
has been duly examined by
me and found correct.
Honolulu, June 17, 1911
Geo F Wright
Surveyor.

No. 1212
Petition filed in the Superior
Court August 14, 1911, 1911.
J. C. Goodman,
Surveyor.

111-2 13.
9/16 U.S.
V. III, N. 21-1276.





Petitioner's Exhibit "D"

Archives of Hawaii. Office of the Librarian Honolulu.

October 22, 1918.

I, the undersigned Librarian of Public Archives hereby certify that the attached list of "Unassigned Land occupied by Private Parties without any title from the Government," is a true and correct copy of a document that figures in connection with papers relating to the decision of the Supreme Court, October Term, 1888, in a suit entitle Lorrin A. Thurston, Minister of the Interior vs. Charles R. Bishop et al., Trustees on file in the Public Archives.

[Seal]

R. C. LYDECKER,

Librarian of Public Archives.

L. C. P. No. 283. Marked for Identification, Oct. 26, 1918, for Petitioner. A. V. Hogan, Regr.

List of Unassigned Lands

Occupied by Private Parties

Without any Title From the Government.

Mrs. B. P. Bishop's Estate.

Hilo, Hawaii.

| | |
|----------------|----------------------|
| Haiku, 1 & 2 | 360 Acres. |
| Kaiaakea | 160 Acres. |
| Kaluakailio | 67 Acres. |
| Kaumana | About 2700 " forest. |
| Kaunihe 1 & 2. | 146 " |
| Lepoloa | 95 Acres. |
| Maulua Iki. | |
| Piha 1 & 2. | 4250 Acres. |
| Waikaumalo | 300 Acres. |

Kau, Hawaii.

| | |
|----------------|----------------|
| Mohokea 1 & 2. | 2761.66 Acres. |
| Paauau | 2974 " |

Island of Molokai.

Kaunakakai. 5240 Acres.

 Kona, Oahu.

Ili of Opu, Makiki, 491.6 Acres.

 W. G. Irwin & Co.

Kioloku in Kau, Hawaii. 834 Acres.

Sold by D. Kalakaua in 1874 to Obed Spencer.

 D. H. Hitchcock.

Kaieie in Hilo, Hawaii. 790 Acres.

Purchased from one Kalawaia.

 Papaikou Sugar Co.

Kaapoko in Hilo, Hawaii. About 100 Acres.

Alleged title derived from one Kou.

 Area 2087 Acres.

Add Makolelau on Molokai, Claimant uncertain.

L. C. P. No. 283. Marked for Identification, Oct. 26, 1918, for Petitioner. A. V. Hogan, Registrar.

No. 1212. Recd. and filed in the Supreme Court August 14, 1919, at 2:00 P. M. J. A. Thompson, Clerk.

[Endorsed]: Exhibit D. No. 3588, for Identification. United States Circuit Court of Appeals for the Ninth Circuit. Filed Oct. 14, 1920. F. D. Monckton, Clerk.

Petitioner's Exhibit "E."

Archives of Hawaii. Office of the Librarian Honolulu.

October 23, 1918.

I, the undersigned Librarian of Public Archives, hereby certify that the attached is a true and correct copy of a document endorsed. "Re, Unassigned Lands—L. 2602—Exhibit D—Thurston vs. Bishop May 1, 1888." (certain pages as noted excepted) on file in the Public Archives.

[Seal]

R. C. LYDECKER,
Librarian, Public Archives.

L. C. P. No. 283. Marked for Identification, Oct. 26, 1918, for Petitioner. A. V. Hogan, Registrar.

No. 1212. Rec'd and filed in the Supreme Court. August 14, 1919, at 2:00 P. M. J. A. Thompson, Clerk.

No. 3588. United States Circuit Court of Appeals for the Ninth Circuit. Filed Oct. 14, 1920. F. D. Monckton, Clerk.

List of Lands Omitted in the "Mahele" of 1848

Island of Hawaii

District of Hilo.

Alaeloa Government Lease 224.

Auliilii

Awawaiki

Haiku 1 & 2. Claimed for Estate of Mrs. B. P. Bishop. 360 Acres.

Hakalau 1, or Iki. Claimed by Crown. Occupied by Hakalau Plantation.

Halepuna.

Gov't Grant 2975, Sept. 20, 1864, for 8.75 Acres.

| | | | | | | | | |
|---|---|------|---|---|---|---|-------|---|
| " | " | 2976 | " | " | " | " | 10.75 | " |
| " | " | 2977 | " | " | " | " | 8.9 | " |
| " | " | 2978 | " | " | " | " | 10.6 | " |
| " | " | 2979 | " | " | " | " | 7.66 | " |
| " | " | 2980 | " | " | " | " | 15.66 | " |

Haliilau. Leased by Government to Kaupakuea Plantation.

Hokumahoe.

Honomainoa & Kaihuiki.

Kaakepa. Gov't. Grant 1357, Mar. 21, 1854, for 40 Acres.

“ “ 1542, Jan. 20 1855, “ 30.75 “

“ “ 2710, May 31, 1860, “ 63.1 “

Kaapoko. Occupied by Papaikou Plantation Co.

Kaiaakea. Claimed for Estate of Mrs. B. P. Bishop. Area 160 Acres.

Kaieie. Claimed by Hitchcock & Kamai. Area 790 Acres.

Kahoahuna 1 & 2.

Kaloaloa 1 & 2.

Kaluakailio. Claimed for Estate of Mrs. B. P. Bishop. Area 67 A.

Kapena.

Kauniho 1 & 2. Claimed for Estate of Mrs. B. P. Bishop. 146 Acres.

Koaloa.

Koomano.

Kukuikea.

Lepoloa. Claimed for Estate of Mrs. B. P. Bishop. Area 95 Acres.

Makahiupa. Gov't. Lease 224.

Manowaiopae. Claimed for Crown. Area 180 Acres.

Maulua 1. Claimed for Estate of Mrs. B. P. Bishop.

Piha 1 & 2. Claimed for Estate of Mrs. B. P. Bishop. 4250 Acres.

Puueo.

Gov't Grant 23, July 15, 1847, 162.4 Acres to B. Pitman.

“ “ 190, Dec. 24, 1849, 10 “ “ H. Brown.

“ “ 185, Dec. 21, 1849, 210.6 “ “ B. Pitman.

Sale by K. IV to T. Miller of 110.93 Acres in 1857.

Remainder leased by K. IV to Thos. Spence in 1862, and sold to him by Commissioners of Crown Lands Aug. 3, 1870.

See Session Laws of 1870, p. 56.

Waikaumalo. Claimed for Estate of Mrs. B. P. Bishop.

District of Hamakua.

| | | |
|-----------------|----------------------------------|------------|
| Alaeakila. | Gov't Grant 1737, Apr. 24, 1855, | 36 Acres. |
| Kamoku. | " " 592, Mar. 10, 1851, | 1640 " |
| | " " 632, May 14, 1851, | 1139 " |
| | " " 1276, Aug. 31, 1853, | 50 " |
| | " " 1559, Jan. 20, 1855, | 320 " |
| | " " 1727, Apr. 21, 1855, | 100 " |
| | " " 3099, July 5, 1873, | 1312 " |
| | " " 358, " 29, 1850, | 640 " |
| | " " 7, Jan. 14, 1847, | 2 " |
| Koloaha. | " " 943, Oct. 26, 1852, | 166.5 " |
| | " " 2047, May 21, 1856, | 41.5 " |
| | " " 2381, June 24, 1857, | 50 " |
| | " " 3173, 1877, | 12.5 " |
| | " " 3238, 1879, | 12.7 " |
| Kulihai. | " " 1562, Jan. 20, 1855, | 37.75 " |
| | " " 2375, June 24, 1857, | 150 " |
| Mahakuolo. | | |
| Manai & Mooiki. | Gov't Grant 2489, June 1, 1858, | 99 Acres. |
| Namoku. | Gov't Grant 1155, July 11, 1853, | 113 Acres. |
| | " " 1968, Feb. 25, 1856, | 40 " |
| | " " 3138, Oct. 12, 1874, | 66 " |
| Nenie. | " Lease 217, to J. P. Parker. | |
| | " Grant 949, Oct. 26, 1852, | 359 Acres. |
| | " " 2160, Nov. 12, 1856, | 159 " |
| | " " 2161, " " " " | 200 " |
| Niupuka. | " " 944, Oct. 26, 1852, | 48 " |
| | " " 1763, May 28, 1855, | 54 " |
| | " " 1564, Jan. 20, 1855, | 48 " |
| | pai, partly in Hana. | |
| Paako. | " " 1558, Jan. 20, 1855, | 50 " |
| | " " 1764, May 28, 1855, | 48 " |
| | " " 1770, " " " " | 48 " |
| | " " 1966, Feb. 25, 1856, | 48.0 " |
| Papaki. | " " 1561, Jan. 20, 1855, | 98.5 " |
| | " " 2444, Dec. 12, 1857, | 51 " |
| | " " 2501, June 1, 1858, | 55.5 " |

| | | | |
|--------------------|------------------|------------------------------------|-------------|
| | Gov't Grant | 2490, June 1, 1858 | 111 Acres. |
| | " " | 2499, " " " | 51. " |
| | " " | 3058, July 7, 1868, | 29.5 " |
| Papalapuka. | | | |
| Papalele. | " " | 1769, May 28, 1855, | 47.5 " |
| | " " | 1880, Oct. 22, 1855, | 60 " |
| Papuaa. | " " | 1774, May 28, 1855, | 72 " |
| Pahukü. | " " | 2051, May 21, 1856, | 30 " |
| | | District of North Kona. | |
| Halekii. | | | |
| | | District of North Kona, continued. | |
| Kawanui 1. | Gov't Grant | 987, Dec. 24, 1852, | 76 Acres. |
| | " " | 1465, Nov. 1, 1854, | 40 " |
| | " " | 1596, Jan. 20, 1855, | 1.1 " |
| | " " | 1597, " " " | 49 " |
| | " " | 1598, " " " | 280.5 " |
| Puukala. | " " | 2410, Aug. 12, 1857, | 208 " |
| Waiaha 2. | | Claimed by Crown. | |
| | | District of South Kona. | |
| Kauleoli 1 & 2. | | | |
| Olelomoana. | Covered by Grant | 3396, Jan. 14, 1887. | 1226 Acres. |
| Papa 2. | " " " | 3397, " " " | 4224 " |
| | | District of Kohala. | |
| Ahulua. | | | |
| Kapaau. | Gov't Grant | 1546, Jan. 20, 1855, | 44.8 Acres. |
| | " " | 1547, " " " | 164.2 " |
| | " " | 1548, " " " | 15.85 " |
| | " " | 2000, Apr. 2, 1856, | 518.5 " |
| | " " | 2055, May 21, 1856, | 112 " |
| | " " | 2105, Sept. 15, 1856, | 70 " |
| | " " | 2461, Feb. 19, 1857, | 88 " |
| Koiae. | | | |
| Koea. | | | |
| Makiloa & Punkole. | Grant | 2362, Apr. 8, 1857, | 182 Acres. |
| Pahinahina. | " | 2334, Feb. 25, 1857, | 155 " |
| " | Gov't Lease | 92 to Kohala Ranch Co. | 408 " |

District of Kau.

Auhulili 1 & 2.

Halekaa.

District of Kau, continued.

Kaapahu.

Kailiula 1 & 2. Grant 2086, Jan. 23, 1860, 247.33 Acres.

Kamakamaka.

Kanaio. Grant 2808, Oct. 14, 1861. 165 Acres.

Kioloku. Area 834 Acres. Surveyed in 1874 for D. Kalakaua.

Kuilioloa.

Kukui 1 & 2.

Kumu 1—8.

Lolipali.

Mahaiula &

| | | | |
|---------|---------------------------|-------|--------|
| Manono. | Grant 819, July 19, 1852, | 49.75 | Acres. |
| | “ 1531, Jan. 20, 1855, | 91.5 | “ |
| | “ 1532, “ “ “ | 46 | “ |
| | “ 2658, Dec. 14, 1859, | 228 | “ |

Miananai.

Mohokea 1 & 2. Claimed for Estate of Mrs. B. P. Bishop.
2761.66 A.

Nalua.

Paauau 1 & 2.

Palauhulu

| | | | |
|---------------|-----------------------------|-------|--------|
| 1 & 2. | Grant 2882, Sept. 19, 1862, | 349 | Acres. |
| Palima 1 & 2. | “ 2655, Dec. 14, 1859, | 162.5 | “ |
| | “ 2446, Dec. 12, 1857, | 173.5 | “ |
| | “ 2727, Sept. 3, 1860, | 755.3 | “ |
| Paukunui. | “ 2118, Nov. 12, 1856, | 52.2 | “ |
| | “ 2653, Dec. 14, 1859, | 205.5 | “ |

Paukuiki.

Pohakuloa.

| | | | |
|-----------|----------------------------|--------|--------|
| Puumakaa. | Grant 2154, Nov. 12, 1856, | 103.3 | Acres. |
| | “ 2757, May 1, 1861, | 138.5 | “ |
| | “ 2758, “ “ “ | 171 | “ |
| | “ 2760 “ “ “ | 106.75 | “ |
| | “ 2523, Aug. 3, 1858, | 90.75 | “ |

Puukoa. Grant 2536, Nov. 14, 1858, 127.66 Acres.

Waiomao.

District of Puna.

Hulunananai.

Iliililoa.

Kaunaloa. Grant 2165, Nov. 12, 1856, 96 Acres.

“ 2807, Oct. 14, 1861, 200 “

Ki, B.

Kahue.

Keekee.

Keonepoko 2. Area 4630 Acres.

Island of Lanai.

Kamoku. Occupied by Crown. Area 8291 Acres.

Kalulu. Area 5945 Acres. Declared to be Government land
by the Privy Council Jan. 31, 1853.

Grant 3029, Sept. 12, 1866, 236.68 Acres.

Paomai. Area 9079 Acres. Occupied by Crown.

Island of Molokai.

Keopuka nui. All sold, Grant 2228, Feb. 2, 1857, 2250 Acres.
Exchanged for $\frac{1}{2}$ of Puueo, Kau, Hawaii, with
Mrs. B. P. Bishop.

Puaahaunui in Koolau.

Hakaanu “ “

Papalaaua “ “

Kikipua “ “

Nihoa “ “ Grant 2681, Dec. 14, 1859, 9 Acres.
“ 2682, “ “ “ 19 “

Wailau in Koolau. Grant 1715, Apr. 20, 1855, 3.7 Acres.
“ 1718, “ “ “ 0.21 “
“ 1723, “ “ “ 32 “

Molokai, continued.

Wailau, continued. Grant 1924, Dec. 28, 1855, 6.00 Acres.
“ 1925, “ “ “ 0.14 “
“ 1989, Apr. 2, 1856, 0.54 “
“ 2111, Nov. 12, 1856, 5.77 “

Grant 2612, Sept. 9, 1859, 41.2 Acres.

" 2617, " " " 9.09 "

" 2618, " " " 1.1 "

Punalau 1 & 2.

Kaunakakai. Claimed for Estate of Mrs. B. P. Bishop. Area 5240 Acres.

Kapaakea. Claimed for Estate of Crown. Area 2178 Acres.

Makole.

Makolelau. Area 2087 Acres.

Island of Oahu.

Ili of Opu in Pawaii, Waikiki. Area 491.6 Acres. Claimed by Estate of Mrs. B. P. Bishop.

Ahupuaa of Keaau, Waianae, Area 2431 Acres. Claimed by the Crown.

Except Pages A, B, C, D, E, F, G, H, I, and J;

Referring to Leases.

Estimated

Area of Unassigned Lands.

Island of Hawaii.

| | |
|------------------|--------------|
| District of Hilo | 11700 Acres. |
|------------------|--------------|

| | |
|-------------|---------|
| " " Hamakua | 10364 " |
|-------------|---------|

| | |
|------------|--------|
| " " Kohala | 3219 " |
|------------|--------|

| | |
|----------|--------|
| " " Kona | 8872 " |
|----------|--------|

| | |
|---------|---------|
| " " Kau | 17179 " |
|---------|---------|

| | |
|----------|---------|
| " " Puna | 11801 " |
|----------|---------|

| | |
|------------------|---------|
| Total for Hawaii | 63135 " |
|------------------|---------|

| | |
|-----------------|---------|
| Island of Lanai | 23315 " |
|-----------------|---------|

| | |
|-------------|---------|
| " " Molokai | 17225 " |
|-------------|---------|

| | |
|----------|---------|
| " " Oahu | 491.6 " |
|----------|---------|

| | |
|--------------------------------|------------|
| Total Area of Unassigned Lands | 104166.6 " |
|--------------------------------|------------|

| | |
|--|-------|
| | 16225 |
|--|-------|

| | |
|--|--------|
| | 3440.6 |
|--|--------|

| | |
|--|-----------|
| | 106,115.6 |
|--|-----------|

Area of Government Grants.

within Unassigned Lands.

| | | | |
|---|-----------|----------|--------|
| District of Hilo | | 579.11 | Aeres. |
| " " Hamakua | | 7823.75 | " |
| " " Kohala | | 1350.35 | " |
| " " North Kona | Estimated | 619.00 | " |
| " " South Kona | " | 5500.00 | " |
| " " Kau | | 3262.25 | " |
| " " Puna | | 296.00 | " |
| <hr/> | | | |
| Total for Hawaii. | | 19430.46 | " |
| Island of Lanai | | 236.68 | " |
| " " Molokai | | 2376.96 | " |
| <hr/> | | | |
| Total Area of Grants in Unassigned Lands. | .22044.1 | " | |

Note.

As the unassigned lands are intermixed with Government Lands, and as their boundaries in many cases are undetermined, the above figures are not exact, but may be regarded as a close approximation to the facts.

Detailed Estimates of
Areas of Unassigned Lands.
Island of Hawaii.
District of Hilo.

| | | | |
|-------------|-----------|------|--------|
| Haiku | Surveyed. | 360 | Aeres. |
| Kaaiaakea | " | 160 | " |
| Kaluakailio | " | 67 | " |
| Kauniho | " | 146 | " |
| Lepoloa | " | 95 | " |
| Manowaiopae | " | 180 | " |
| Kaumano | " | 2700 | " |
| Piha | " | 4250 | " |
| Puueo | " | 2800 | " |
| Hakalau 1 | " | 614 | " |
| Kaieie | " | 790 | " |

Henomainoa &

| | | | | |
|-------------------------------|------------|-----------|-------|--------|
| Kaihuiki | Surveyed | | 245 | Acres. |
| Waikaumalo | " | | 300 | " |
| | | | | — |
| Total Surveyed | | | 10007 | " |
| Auliili | Unsurveyed | | | |
| Awawaiki | " | | | |
| Kaihoahuna & | " | | | |
| Kaloaloa 1 & 2 | " | estimated | 500 | Acres. |
| Halepuna. All Sold. | | | 65 | " |
| Hokumahoe | " | | 230 | " |
| Kaakepa A. & B. | " | | 314 | " |
| Kaapoko | " | | 100 | " |
| Kukuikea | " | | 22 | " |
| Alaeloa, | | | | |
| Haliilau, | | | | |
| Kapena, Maulua Iki, | | | | |
| Koaloa, Koomano, Makahiupa, & | | " | 462 | " |
| | | | | — |
| Total for Hilo | | | 11700 | " |

Island of Hawaii.

District of Hamakua.

| | | | | |
|----------------------|----------|--------------------|------|--------|
| Alaeakila | | estimated from map | 150 | Acres. |
| Kamoku | " | about | 1500 | " |
| Koloaha | " | from map | 380 | " |
| Kulihai | " | " " | 280 | " |
| Mahakuolo. All Sold. | | | 441 | " |
| Manai & | | | | |
| Mooiki A | Surveyed | | 175 | " |
| Namoku | " | | 287 | " |
| Nienie & Papuaa | | estimated from map | 484 | " |
| Niupuka | " " " | | 54 | " |
| Paako & Papalapuka | " " " | | 280 | " |
| Pahuikii, very small | | | | — |
| Papaki | " " " | | 333 | " |

Papalele

estimated from map 6000 Acres.

Total for Hamakua

10364 "

| District of Kohala. | | |
|-------------------------|-----------|------------|
| Ahulua | estimated | 375 Acres. |
| Kapaau. | All sold. | 306 " |
| Koiae | estimated | 320 " |
| Koea | " | 350 " |
| Makiloa | " | 1005 " |
| Pahinahina from surveys | | 563 " |
| Pumkole | estimated | 300 " |

Total for Kohala

3219 "

District of North Kona.

| | | |
|----------------------|--------------------|------------|
| Kawanui 1. | Estimated from map | 585 Acres. |
| Puukala | " " " | 807 " |
| Waiahia 2. | " " " | 230 " |
| Total for North Kona | | 1622 " |

District of South Kona.

| | | |
|-----------------|--------------------|--------|
| Kauleoli 1 & 2. | Estimated from map | 460 " |
| Olelomoana 1. | " " " Grant | 1276 " |
| " 2. | Estimated | 1290 " |
| Papa 2. | Grant | 4224 " |

Total for South Kona.

7250 "

District of Kau.

| | | |
|----------------|-----------------|-------------|
| Auhulili 1 & 2 | Estimated about | 1000 Acres. |
| Halekaa | " | 120 " |
| Kaapahu | " | 600 " |
| Kailiula | " | 1000 " |
| Kamakamaka | " | 500 " |
| Kanaio | " | 500 " |
| Kioloku | Surveyed | 834 " |
| Kukui 1 & 2 | Estimated | 150 " |
| Kuilioloa | " | 500 " |

| | | | |
|----------------------|-----------|-------|--------|
| Kumu 1—8. | Estimated | 1000 | Acres. |
| Lolipali | " | 120 | " |
| Mahaiula | " | 100 | " |
| Manono | " | 450 | " |
| Miananai | " | 100 | " |
| Mohokea | Surveyed | 2761 | " |
| Nalua | Estimated | 100 | " |
| Paauau | Surveyed | 2974 | " |
| Palauhulu. All Sold. | | 349 | " |
| | | ————— | " |
| | over | 13158 | " |

District of Kau, continued.

| | | | |
|-------------------|-----------|-------|--------|
| Brought forward | | 13158 | Acres. |
| Palima. All sold. | | 1263 | " |
| Pauku 1 & 2. " " | | 258 | " |
| Pohakuloa | Estimated | 500 | " |
| Puukoa | " | 500 | " |
| Puumakaa | " | 1500 | " |
| | | ————— | " |
| Total for Kau. | | 17179 | " |

District of Puna.

| | | | |
|----------------|-----------|-------|--------|
| Hulunananai | Surveyed | 361 | Acres. |
| Iliililoa | Estimated | 300 | " |
| Kanane | " | 1200 | " |
| Ki B. | " | 500 | " |
| Keekee | " | 1500 | " |
| Kahue | Surveyed | 3310 | " |
| Keonepoko 2. | " | 4630 | " |
| | | ————— | " |
| Total for Puna | | 11801 | " |

Island of Lanai.

| | | | |
|-----------------|-----------|-------|--------|
| Paomai | By Survey | 9079 | Acres. |
| Kamoku | " " | 8291 | " |
| Kalulu | " " | 5945 | " |
| | | ————— | " |
| Total for Lanai | | 23315 | " |

Island of Oahu.

| | | |
|-----------------------------|-----------|--------------|
| Ili of Opu in Makiki | By Survey | 491.6 Acres. |
| Ahupuaa of Keaau in Waianae | | 2431 " |
| " " Kuliouou Iki, Kona. | | 518 " |
| | | 3440.6 " |

Island of Molokai.

| | | | |
|-------------------|-----------------|-------|---|
| Keopuka Nui | Surveyed | 2250 | " |
| Kaunakakai | " | 5240 | " |
| Kapaakea | " | 2148 | " |
| Makolelau | " | 2087 | " |
| Makole | Estimated | 1000 | " |
| Puaahaunui, | " | | |
| Hakaanu, | " | | |
| Papalaua, & | " | | |
| Kikipua, | " 4 small lands | 500 | " |
| Nihoa | " | 1000 | " |
| Punalau 1 & 2. | " | 1000 | " |
| Wailau | " | 2000 | " |
| Total for Molokai | | 17225 | " |

[Endorsed]: Re Unassigned Lands. L. 2602, Exhibit D, Thurston vs. Bishop, May 1, 1888, H. S. List of Unassigned Lands. This copy was substituted on May 24, 1888, for the written one then on file, by permission of Mr. Justice Dole. (S) J. H. Reist, Second Deputy Clerk.

Petitioner's Exhibit "F."

KO KAMEHAMEHA III.

| Na Aina. | Ahupuaa. | Kalana. | Mokupuni. |
|--|----------|---------|-----------|
| Onouli | " | Kona | Molokai |
| Kuhua | " | Lahaina | Maui |
| Keokea | " | Kula | " |
| 2 Kealahou 1, 2, | " | " | " |
| Waiakoa | " | " | " |
| 1 Kamehame 2, | " | " | " |
| 5 Omaopio, 6, 7, 8, 9, 10, | " | " | " |
| 1 Aaapueo 3, | " | " | " |
| 2 Kahilo 1, 2, | " | " | " |
| Keahua | " | " | " |
| 1 Kukuiaceo 3, | " | " | " |
| 2 Kauau, 1, 2, | " | " | " |
| Ahupau | " | " | " |
| Hokuula | " | " | " |
| Puaulanī, Holi ia no ke kakau hewa, mamua o ke kau ana o na inoa. S. P. Kalama.. | | | |
| Kouli | " | " | " |
| Puulani | " | Kaupo | " |
| Kaawaloa Awa, a me kahi) honua i kai) | | Kona | Hawaii |
| Kealakekua ke awa a me) kahi honua i kai) | | " | " |
| Keekee | Ahupuaa. | " | " |
| 2 Kanaueue, 1, 2, | " | " | " |
| 2 Paukea, 1, 2, | " | Kohala | " |
| Na Aina. | Ahupuaa. | Kohala | Hawaii |
| Kaauhuhu | " | " | " |
| Aamakao | " | " | " |
| Honomu | " | Hilo | " |
| Apua | " | Puna | " |
| Makaka | " | Kau | " |
| Wailau | " | " | " |

| | | | |
|--------------------|---------|---------|--------|
| Kaalaiki | " | " | " |
| Kiolakaa | " | Kau | Hawaii |
| Papaikou | " | " | " |
| Nukakaia | " | " | " |
| Mohoae | " | " | " |
| Wailua Ili ma Hana | | | Maui |
| Waiomao | Ili ma | Waikiki | Oahu |
| Hamama | " | " | " |
| Makua | Ahupuaa | Waianae | " |

Ke ae aku nei au i keia mahele, ua maikai. No ka Moi na aina i kakau maluna ma ka aoao 9, 11 o keia Buke, aohe o'u keleana maloko.

KEOHOKALOLE

Hale Alii,
Januari 28, 1848.

I hereby certify the foregoing to be a true and correct copy of the Division of Lands between Kamehameha III and Keohokalole as recorded in Mahele Book M. H. 1848, page 9, on file in the office of the Commissioner of Public Lands.

[Seal]

C. T. BAILEY,
Commissioner of Public Lands.

Land Office, Honolulu, August 14, 1919.

L. C. P. No. 283. Received for Identification Oct.
26, 1918, and Marked Petitioner's Exhibit F. A. V.
Hogan, Registrar.

8/24/20.

Ko Keohokalole.

| Na Aina. | Ahupuaa. | Kalana. | Mokupuni. |
|---------------------------|----------|---------|-----------|
| Paeohi | " | Lahaina | Maui |
| 2 Kaheo, 1, 2, | " | Kula | " |
| 3 Alae, 1, 2, 3, | " | " | " |
| 2 Kealahou, 3, 4, | " | " | " |
| 1 Kamehame, 1, | " | " | " |
| 5 Omaopio, 1, 2, 3, 4, 5, | " | " | " |
| 2 Aapueo, 1, 2, | " | " | " |
| Makehu | " | " | " |

Pākālani 1, 2, Holoia ia, no ke komo papalua mamua o ke kau ana i na inoa.

S. P. Kalama.

| | | | |
|--------------------|---|----------|--------|
| 2 Kailua, 1, 2, | " | " | " |
| 2 Pukalani, 1, 2, | " | " | " |
| Alaakua | " | Hana | " |
| Kukuiula | " | Kipahulu | " |
| Muolea | " | Hana | " |
| Hamoo | " | " | " |
| Kealakekua | " | Kona | Hawaii |
| Kaawaloa | " | " | " |
| Onouli | " | " | " |
| Ilikahi | " | " | " |
| Kanakau | " | " | " |
| Keahuolu | " | " | " |
| Kaipuhaa | " | Kohala | " |
| Hanaula | " | " | " |
| Paauhan | " | Hamakua | " |
| Keahakea | " | " | " |
| Honohina | " | Puna | " |
| Puua | " | " | " |
| Kaioula | " | Kau | " |
| 2 Makaakupa, 1, 2, | " | " | " |
| Keaiwa | " | Kau | Hawaii |
| Kaauhuhuula | " | " | " |
| Pohina | " | " | " |
| Puhalanui | " | " | " |

| Na Aina. | Ahupuaa. | Kalana. | Mokupuni. |
|-------------|----------|-----------|-----------|
| Wiliwilinui | " | " | " |
| 2 Papohaku | " | " | " |
| Kawela | " | " | " |
| Pau Ili | | Kohala | " |
| Hamohamo | " | Waikiki | Oahu |
| Kahana | " | Koolauloa | " |

Ke as aku nei au i keia mahele, ua maikai. No Keohokalole na aina i kakau ia maluna ma ka aoao 10, 12, o keia Buke; ua ae ia ku e hiki ke lawe aku imua o ka Poe Hoona Kuleana.

KAMEHAMEHA.

Hale Alii,
Januari 28, 1848.

I hereby certify the foregoing to be a true and correct copy of the Division of Lands between Keohokalole and Kamehameha III, as recorded in Mahele Book M. H. 1848, page 10, on file in the office of the Commissioner of Public Lands.

[Seal]

C. T. BAILEY,
Commissioner of Public Lands.

Land Office, Honolulu, August 14, 1919.

L. C. P. No. 283. Received for identification Oct. 26, 1918, and Marked Petitioner's Exhibit F. A. V. Hogan, Registrar.

8/24/20.

No. 1212. Recd. and filed in the Supreme Court at 2:00 P. M., August, 14, 1919. J. A. Thompson, Clerk.

[Endorsed]: #1444, L. C. P. 283, Petitioner's Exhibit F.

No. 3588. United States Circuit Court of Appeals for the Ninth Circuit. Filed Oct. 14, 1920. F. D. Monckton, Clerk.

Respondent's Exhibit No. 1.

Archives of Hawaii. Office of the Librarian Honolulu.

October 17th, 1918.

I, the undersigned Librarian of Public Archives hereby certify that the attached letter dated January 9th, 1888, addressed to the Minister of the Interior, and signed W. D. Alexander, Surveyor-General, and its four enclosures are true and correct copies of the originals, on file in the Public Archives.

[Seal]

R. C. LYDECKER,

Librarian, Public Archives.

Hawaiian Gov. Survey.

Honolulu, H. I. January 9, 1888.

Stamp received Jan. 22, 1889.

Answered_____

By_____

His Ex. L. A. Thurston,

Minister of the Interior.

Sir:

In regard to the subject of the unassigned lands, referred to me, I beg leave to report briefly as follows:

As was stated in my report of March 31, 1886, "this question is increasing in importance, and calls for settlement. There are 104 lands of this class, 88 on Hawaii, 12 on Molokai, two on Lanai and two on Oahu."

The question does not seem to turn on statute law as much as on fundamental principles, and takes us back to the first organization of constitutional government on these islands.

I shall endeavor to make a brief statement of the

case, not as a lawyer, but as a layman and a student of history.

It is admitted by all that under the ancient feudal system, the *allodium* of all land belonged to the King, not, however, as an individual, but "as the head of the nation or in his corporate right," to quote the language of the Land Commission.

The Constitution of 1840 declares that the land of the Kingdom was not the private property of Kamehameha I. "It belonged to the chiefs and people in common, of whom Kamehameha I, was the head, and had the management of the landed property."

Thus all lands forfeited for non-payment of taxes reverted to him. His consent was necessary for any transfers of real estate in the Kingdom, and also for real mortgages, and for the seizure of land for debt. (See Old Laws, p. 179.) When the labor tax first began to be regulated by law, every tenant was required to work one day in every week (Tuesday) for the King, and one day (Friday) for the landlord. But this tax was afterwards reduced to 36 days in the year for the King, and an equal number for the landlords. (Old Laws p. 27.) At the same time, it is doubtless true that Kamehameha III, would not have ventured at any time to dispossess one of those high chiefs whose titles to land dated from the Conquest, and who were consulted on all important affairs of state.

The ideas of a Nation and of a Government as distinguished from the person of the Sovereign were

formerly not understood, and first began to be clearly recognized in the Constitution of 1840.

From that time it was seen more and more clearly that the King held a twofold character, first as an individual chief and landholder, and secondly in his official capacity as head of the Government.

It was in this dual character that the Land Commission decided that one third of the lands in the Kingdom belonged to the King. It is hardly necessary in this report to repeat the history of the Land Commission and of the great Division of "Mahele" of 1848.

"It was evident," to quote from the decision of the Supreme Court, "In the matter of the Estate of His Majesty, Kamehameha IV," that the lands held by the King at the close of the "Mahele" were not regarded as his private property, strictly speaking. Even before his division with the landlords, a second division between himself and the Government was clearly contemplated, and he appears to have admitted that the lands he then held might have been subjected to a commutation in favor of the Government in like manner with the lands of the chiefs." And on the very day after the "Mahele" or division with his chiefs had closed, viz., the 8th of March, 1848, he proceeded "to set apart for the use of the Government the larger part of his royal domain, reserving to himself what he deemed a reasonable amount of land as his own estate." This latter class of lands "he reserved for himself and his heirs forever," as his own private estate, and they are now known as Crown Lands, the word "heirs" having

been declared by the Supreme Court to mean "successors to the throne." (Haw. Rep. Vol. II, p. 725.)

On the 7th of the following June, 1848, the Legislative Council passed the "Act relating to the lands of His Majesty, the King, and those of the Government," which merely confirms and ratifies what had already been done by the King, and designates the several Crown Lands and Government Lands by name.

As the whole work of the "Mahele" was pushed through to completion in 40 days, it resulted from undue haste and from imperfect information, that many lands, especially on Hawaii, were entirely overlooked.

The question is, to whom do they belong? As all *private* claims not brought before the Land Commission were declared to be *forever barred*, and as even the claims recorded in the Mahele Book, which were not presented before June 30, 1862, have reverted to the Government according to law, no title based on any such claim can be entertained. It was entirely in the power of the King and Legislative Council, representing the Nation, to prescribe the conditions on which alone allodial titles to land could be obtained.

The next question is, whether the lands in question belong to the class of Government lands, or to that of Crown lands, or to the lineal heirs of Kamehameha III.

As the Crown Lands, which descend to the successors of the Hawaiian Crown, are expressly limited and designated by name in the Act of June 7th, 1848,

I cannot find any legal authority for adding the unassigned lands to that list.

The decisions of the Supreme Court in the case of Kamehameha IV's Estate, cited above, and in the case of "Queen Emma vs. Commissioners of Crown Lands," tried in Jan. 1883, fully recognize the distinction between the Crown Lands Estate and the other private estate both real and personal of Kamehameha III. It was decided in the former case that "the descent of that part of his estate must be governed by the general yaw of inheritance"; and in the latter case that certain pieces of land, held under L. C. Award No. 10806, "not having been enumerated and made Crown Lands, * * * were not affected by statutes relating to Crown Lands."

Leaving, then, to one side the claim of the Commissioners of Crown Lands, the question lies between the Government and the heirs of Kamehameha III, represented by Mrs. Pauahi Bishop's Estate.

The question is whether the lands in dispute, overlooked by inadvertence in the great Division, shall be regarded as having belonged to the private estate of Kamehameha III, or to the Government as representing the Nation.

Several considerations tend to show that the parties who executed the original Mahele, Kamehameha III, and his Council, held the latter view. In the absence of any general declaration by the King and Council, we can infer their views from their action in special cases.

It is a significant fact that the King obtained an Award of the Land Commission No. 10806, for cer-

tain town lots, which had not been included in the Mahele.

As we have seen, those private claims, which were forfeited by neglect to present them before the Land Commission before Feb. 14th, 1848, *lapsed to the Government*, and not to the King.

In the same way the claims of Konohiki's, whose names were in the "Mahele Book," but who had failed to present their claims before the last day of June, 1862, were declared to have reverted *to the Government*.

Furthermore, town lots in default of heirs escheat to the Government. (Haw. Reports, Vol. III., p. 332.) What is more important is the fact that during the reign of Kamehameha III., the very lands in question were, as a class, treated as Government property, and that many sales from these lands were made by the Government, Royal Patents for which were signed by him.

About the only exception is the case of the land of Puueo, Hilo, which by some mistake was treated both as a Crown and a Government land.

It is certain that Kamehameha III and the able men who composed his Council, and who laid the foundation of the tenure of real estate now existing, understood their own work better than reactionaries of a later generation.

The powers delegated to the Land Commission were conferred by the Nation, King, Nobles and Commons, the latter being as yet but imperfectly represented. The titles finally patented emanated not from the King as an individual, but as repre-

sentative of the Government. It cannot be pretended that he alone gave the people their "*kuleanas*," for example, or that the *commutation* either in land or money was paid to him.

It was for the common benefit, to endow a National Government, that both the King and the Nobles voluntarily ceded part of their lands to the Government, and the Kuleanas were given by the chiefs as much as by the King.

It is true, indeed, that in such a period of transition, the true theory of the—revolution taking place was not clearly understood by the majority of those concerned in it, and that inconsistencies may be found in some of their acts.

But, in the view held by the master spirits of that peaceful revolution, the Government represents the Nation, including all the parties that divided the land, formerly held in common, and the Government is, therefore, so to speak, the residuary legatee.

At the same time, the Minister of the Interior is empowered by law to dispose of land in certain cases by quit-claim deeds, or otherwise, "by way of compromise or equitable settlements of the rights of claimants," and has exercised this right, notably in the case of the unassigned lands of Olelomoana and Papa 2, in South Kona, Hawaii.

The case of certain lands like Kaunakakai, Molokai, may be similar to the above, and if they are claimed for benevolent or charitable purposes, it is

probable that the Legislature would authorize the issuing of a Patent to the petitioner.

I submit herewith a list of the unassigned lands, together with the sales or leases of the same, and cases of adverse occupation are noted where they exist.

I have the honor to be,

Your ob't servant,

(Sgd.) W. D. ALEXANDER,
Surveyor-General.

Stamp:

Received

June 15, 1888

Answered —————

By —————

Area of Unassigned Lands.

Island of Hawaii.

| District of | Lands | Acres. |
|------------------|-------|--------|
| Hilo | | 11700 |
| " " Hamakua | | 10364 |
| " " Kohala | | 3219 |
| " " Kona | | 8872 |
| " " Kau | | 17179 |
| " " Puna | | 11801 |
| <hr/> | | |
| Total for Hawaii | | 63135 |
| | | " |

| | | |
|-----------------|-------|--------|
| Island of Lanai | 23315 | Acres. |
| “ “ Molokai | 17225 | “ |
| “ “ Oahu | 491.6 | “ |

Total Area of Unassigned Lands 104166.6 “

Area of Government Grants

Within Unassigned Lands.

| | | |
|--------------------------|---------|--------|
| District of Hilo | 579.11 | Acres. |
| “ “ Hamakua | 7823.75 | “ |
| “ “ Kohala | 1350.35 | “ |
| “ “ North Kona Estimated | 619.00 | “ |
| “ “ South Kona “ | 5500.00 | “ |
| “ “ Kau | 3262.25 | “ |
| “ “ Puna | 296.00 | “ |

Total Area of Grants in Hawaii 19430.46 “

“ “ “ “ Lanai 236.68 “

“ “ “ “ Molokai 2376.96 “

Total Area of Grants in Unassigned
Lands 22044.1 “

R. C. L.

Unassigned Lands Surrendered to the Government
by the Crown Commissioners.

Hawaii.

Hakalau-iki, Hilo,

Manowaiopae, “

Waiaha 2, Kona.

Lanai.

Paomai,

Kamoku,

Kalulu,

Molokai.

Kapaakea,

Oahu.

Kulionouiki, Kona,

Keaau, Waianae.

Maui.

Waiohuli, Kula.

R. C. L.

Unassigned Lands in the Possession of the Government.

District of Hilo.

Alaeola.

Aulilii.

Awawaiki.

Haliilau.

Hokumahoe.

Honomainoa & Kaihuiki.

Kahoahuna 1 & 2.

Kapena.

Koaloa.

Kaumana.

Koomano.

Kukuikea.

Makahiupa.

District of Hamakua.

Mahakuolo.

Nienie.

Papalapuka.

Pahukii.

District of South Kona.

Kauleoli 1 & 2.

District of Kohala.

Ahulua.

Koaie.

Koea.

Pahinahina.

R. C. L.

District of Kau.

Ahulili 1 & 2.

Halekaa.

Kaapahu.

Kamakamaka.

Kuilioloa.

Kukui 1 & 2.

Kumu 1—8.

Lolipali.

Mahaiula.

Miananai.

Nalua.

Paukuiki.

Pohakuloa.

Waiomao.

District of Puna.

Hulunanai.

Iliililoa.

Ki, B.

Kahue.

Keekee.

Keonepoko, 2.

Island of Lanai.

Kalulu. Area 5945 Acres. Declared to be Government land by the Privy Council Jan. 31st, 1853.
Grant 3029, Sept. 12th, 1866, 236.68 Acres.

Island of Molokai.

Puaahaunui in Koolau.

Hakaanu " "

Papalaaua " "

Kikipua " "

Punalau 1 & 2.

Makole.

R. C. L.

Unassigned Lands Sold by the Government.

District of Hilo.

Halepuna. Gov't Grant 2975, Sept. 20, 1864, for 8.75 Acres.

| | | | | | | | | |
|---|---|-------|---|---|---|---|-------|---|
| " | " | 2976, | " | " | " | " | 10.75 | " |
| " | " | 2977, | " | " | " | " | 8.9 | " |
| " | " | 2978, | " | " | " | " | 10.6 | " |
| " | " | 2979, | " | " | " | " | 7.66 | " |
| " | " | 2980, | " | " | " | " | 15.66 | " |

Kaakepa. " 1357, Mar. 21, 1854, for 40 Acres.

| | | | | | |
|---|---|----------------------|---|-------|---|
| " | " | 1542, Jan. 20, 1855, | " | 30.75 | " |
| " | " | 2710, May 31, 1860, | " | 63.1 | " |

Puueo. " 23, July 15, 1847, 162.4 Acres to B. Pitman.

| | | |
|---|---|---|
| " | " | 190, Dec. 24, 1849, 10 Acres to H. Brown. |
|---|---|---|

| | | |
|---|---|---|
| " | " | 185, Dec. 21, 1849, 210.6 Acres to B. Pitman. |
|---|---|---|

District of Hamakua.

Alaeakila. Gov't. Grant 1737, Apr. 24, 1855, 36 Acres

| | | | | |
|---------|---|---|--------------------------|---|
| Kamoku. | " | " | 592, Mar. 10, 1851, 1640 | " |
|---------|---|---|--------------------------|---|

| | | | |
|---|---|-------------------------|---|
| " | " | 632, May 14, 1851, 1139 | " |
|---|---|-------------------------|---|

| | | | |
|---|---|-------------------------|---|
| " | " | 1276, Aug. 31, 1853, 50 | " |
|---|---|-------------------------|---|

| | | | |
|---|---|--------------------------|---|
| " | " | 1559, Jan. 20, 1855, 320 | " |
|---|---|--------------------------|---|

| | | | | |
|----------|-------------|----------------------|-------|--------|
| | Gov't Grant | 1727, Apr. 21, 1855, | 100 | Acres. |
| | " | 3099, July 5, 1873, | 1312 | " |
| | " | 358, " 29, 1850, | 640 | " |
| | " | 7, Jan. 14, 1847, | 2 | " |
| Koloaha. | " | 943, Oct. 26, 1852, | 166.5 | " |
| | " | 2047, May 21, 1856, | 41.5 | " |
| | " | 2381, June 24, 1857, | 50 | " |
| | " | 3173, 1877, | 12.5 | " |
| | " | 3238, 1879, | 12.7 | " |
| R. C. L. | | | | |

District of Hamakua.

| | | | | |
|-----------|-------------|----------------------|------|--------|
| | Gov't Grant | 1562, Jan. 20, 1855, | 3775 | Acres. |
| | " | 2375, June 24, 1857, | 150 | " |
| | Gov't Grant | 2489, June 1, 1858, | 99 | Acres. |
| | Gov't Grant | 1155, July 11, 1853, | 113 | Acres. |
| | " | 1968, Feb. 25, 1856, | 40 | " |
| | " | 3138, Oct. 12, 1874, | 66 | " |
| Nienie. | " | 949, Oct. 26, 1852, | 359 | " |
| | " | 2160, Nov. 12, 1856, | 159 | " |
| | " | 2161, " " " | 200 | " |
| Nuipuka. | " | 944, Oct. 26, 1852, | 48 | " |
| | " | 1763, May 28, 1855, | 54 | " |
| | " | 1564, Jan. 20, " 48 | " | |
| | | partly in Hanapai. | | |
| Paako. | " | 1558, Jan. 20, 1855, | 50 | " |
| | " | 1764, May 28, " | 48 | " |
| | " | 1770, " 28, " | 48 | " |
| | " | 1966, Feb. 25, 1856, | 48 | " |
| Papaki. | " | 1561, Jan. 20, 1855, | 98.5 | " |
| | " | 2444, Dec. 12, 1857, | 51 | " |
| | " | 2501, June 1, 1858, | 55.5 | " |
| | " | 2490, " 1, " | 111. | " |
| | " | 2499, " " " | 51 | " |
| | " | 3058, July 7, 1868, | 29.5 | " |
| Papalele. | " | 1769, May 28, 1855, | 47.5 | " |
| | " | 1880, Oct. 22, 1855, | 60. | " |

| | |
|--------------------|---|
| | District of Hamakua. |
| Papuaa. | " " 1774, May 28, " 72. " |
| | " " 2051, May 21, 1856, 30. " |
| | District of North Kona. |
| Kawanui 1. | Gov't Grant 987, Dec. 24, 1852, 16 Acres. |
| | " " 1465, Nov. 1, 1854, 40 " |
| | " " 1596, Jan. 20, 1855, 1.1 " |
| | " " 1597, " " " 49. " |
| R. C. L. | District of North Kona, continued. |
| Kawanui. | Gov't Grant 1598, Jan. 20, 1855, 280.5 " |
| Puukala. | " " 2410, Aug. 12, 1857, 208 " |
| | District of South Kona. |
| Olelomoana. | Covered by Grant 3396, Jan. 14, 1887, 1226 Acres. |
| Papa 2. | " " " 3397, " " " 4224 " |
| | District of Kohala. |
| Kapaau. | Gov't Grant 1546, Jan. 20, 1855, 44.8 Acres |
| | " " 1547, " " " 164.2 " |
| | " " 1548, " " " 15.85 " |
| | " " 2000, Apr. 2, 1856, 518.5 " |
| | " " 2055, May 21, 1856, 112. " |
| | " " 2105, Sept. 15, " 70. " |
| | " " 2461, Feb. 19, 1857, 88. " |
| Makiloa & Puukole. | Grant 2362, Apr. 8, 1857, 182 Acres. |
| Pahinahina. | " 2334, Feb. 25, 1857, 155 " |
| | District of Kau. |
| Kailiula 1 & 2. | Grant 2686, Jan. 23, 1860, 247.33 Acres. |
| Kanaio. | " 2808, Oct. 14, 1861, 165. " |
| Manono. | " 819, July 19, 1852, 49.75 " |
| | " 1531, Jan. 20, 1855, 91.5 " |
| | " 1532, " " " 46. " |
| | " 2658, Dec. 14, 1859, 228. " |
| Palauhulu | Grant 2882, Sept. 19, 1862, 349. Acres |
| 1 & 2. | |
| Palima 1 & 2. | " 2655, Dec. 14, 1859, 162.5 " |
| | " 2446, " 12, 1857, 173.5 " |
| | " 2727, Sept. 3, 1860, 755.3 " |
| Paukunui. | " 2118, Nov. 12, 1856, 52.2 " |
| | " 2653, Dec. 14, 1859, 205.5 " |
| Puumakaa. | Grant 2154, Nov. 12, 1856, 103.3 Acres. |
| | " 2757, May 1, 1861, 138.5 " |
| R. C. L. | |

District of Kau, continued.

iumakaa. Grant 2758, May 1, 1861, 171. Acres.

" 2760, " " " 106.75 "

" 2523, Aug. 3, 1858, 90.75 "

uukoa. " 2536, Nov. 14, " 127.66 "

District of Puna.

aunaloa. Grant 2161, Nov. 12, 1856, 96. Acres.

" 2807, Oct. 14, 1861, 200. "

Island of Molokai.

eopuka nui. All sold. Grant 2228, Feb. 2, 1857, 2250 Acres.

xchanged for 1/2 of Puueo, Kau, Hawaii, with Mrs. B. P.

Bishop.

ihoa in Koolau, Grant 2681, Dec. 14, 1859, 9 Acres.

" 2682, " " " 19 "

Tailau in Koolau. " 1715, Apr. 20, 1955, 3.7 "

" 1718, " " " 0.21 "

" 1723, " " " 32. "

" 1924, Dec. 28, 1855, 6. "

" 1925, " " " 0.14 "

" 1989, Apr. 2, 1856, 0.54 "

" 2111, Nov. 12, 1856, 5.77 "

" 2612, Sept. 9, 1859, 41.2 "

" 2617, " " " 9.09 "

C. L. " 2618, " " " 1.1 "

L. C. P. No. 283. Received in evidence October 22, 1918, and marked Respondent's Exhibit #1. A. V. Logan,, Registrar.

No. 1212. Recd and filed in the Supreme Court August 14, 1919, at 2:00 P. M. J. A. Thompson, Clerk.

[Endorsed]: No. 3588. Contestant's Ex. "1." United States Circuit Court of Appeals for the Ninth Circuit. Filed Oct. 14, 1920. F. D. Monckton, Clerk.

W A I D E R V



I hereby certify this to be a true and correct copy of a portion of registered Map No. STS on file in the office of the Hawaii Territory Survey, some being entitled "Map of a Portion of Kau District, Island of Hawaii," showing Ahupuaas, Grants, and Unsold Govt. Lands. Compiled by (1879) F.S. Lyman. Hilo; Aug. 79.
Pencil notations are designated in blue ink.

7/10. 1912
Recorded in the Supreme Court
August 11th, 1914, at 2:00 P.M.
J. L. Thompson

*Walter E. Hall,
Surveyor, Territory of Hawaii.*

283

Respondent's Exhibit No. 11.

DEED OF TRUST.

Stamped.

This Indenture, made this fourteenth day of June, A. D., one Thousand eight hundred & sixty, between K. Kapaakea & A. Keohokalole his wife, of Honolulu, Island of Oahu, Hawaiian Islands, of the first part, and Charles R. Bishop, his heirs & assigns of the same place, Trustee appointed for the purposes herein after mentioned of the second part, Witnesseth:

That whereas, the said parties of the first part or either one of them, are now justly indebted to sundry persons & are unable at present to pay the amounts of the same & deem it just & reasonable to secure & pay the amount of said indebtedness.

Now therefore this indenture witnesseth, that for the consideration & purposes herein contained & in consideration of one dollar to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, the said parties of the first part, doth by these presents, grant, bargain, sell, convey, assign & transfer & set over unto the said party of the second part & his heirs & assigns; all of their rights & interest in possession or in expectancy in & to all of their Real, Personal & Mixed estate including goods, wares, merchandise, furniture, horses, cattle, choses in Action & property & effects of every description to them or either of them or in which they or either of them have any rights or interest whatsoever on the Hawaiian

Islands or else where, wherever the same may be found, saving & excepting their personal wardrobe.

To have & to hold all & singular the premises hereby assigned or assured or intended to be assigned to the said part of the second part his heirs & assigns to his & their use & behoof forever.

But upon Trust, that the said party of the second part, his heirs and assigns shall with all reasonable speed out of the rents & profits or from the proceeds of the sale of the said property hereby assigned & transferred after deducting & retaining all such costs, charges & expenses & disbursements as shall be sustained or reasonably due in for or in relation to the execution of the trust hereof including the costs & charges & expenses of preparing & executing these presents, pay off & cancel all of the outstanding debts due & owing by the parties of the first part or either of them, together with the interest that may be due or become due on the same & for that purpose to sell & dispose of so much of the said property as may be necessary at Auction or otherwise upon such terms as may be deemed for the interest of the *part* of the second part, or to mortgage the same for the same purpose & after the payment of all of said outstanding debts & liabilities upon the further trust to manage & control what ever of the said property may remain unsold & not disposed for the uses and benefit of Keohokalole one of the parties of the first part, accounting for the use & profits thereof to her for & during her natural life and upon her decease to distribute

the entire remaining property share & share alike between her legal heirs.

And the said parties of the first part by these presents, doth name, constitute, & appoint the said party of the second part to be their Attorney irrevocable with full power of substitution in his name, or in the name of the said parties of the first part or otherwise howsoever, as the case may require but to & for the trusts herein declared, to demand, sue for, recover & receive the outstanding debts, interest, trust property & effects, to lease or mortgage the Real Estate until sold & the same to sell & convey, to receive the purchase money of the said Real Estate when sold & to institute, prosecute & defend all such processes & suits at law or in equity as may be necessary to fulfil the trust by this instrument created & to execute & perform, transact & deliver all such deeds, writing, acquittances acts matters & things as shall be necessary & expedient to carry into effect the trusts, uses, interests & purposes herein declared or contained as fully & effectually as the said parties of the first part could do personally if these presents had not been made. And the said parties of the first part doth hereby covenant with the said party of the second part, that the said parties of the first part will at all times promote & forward the speedy receipt & recovery of the debts, property & effects aforesaid & ratify & confirm all such acts as shall be lawfully done therein by virtue of these presents & will execute & perform all such other acts, deeds matters & things for the better & further assigning & assuring the

premises herein before assigned or otherwise assured & intended so to be, to the said party of the second part & for the interests & purposes herein declared as may be reasonably advised or requested. And it is hereby agreed by & between the parties hereto, that the said Trustee, may at his discretion, compound any debt or debts due or owing to the said parties of the first part & enter into & sign and execute any bargain or deed of composition, compromise or assignment of or with any person indebted to the said parties of the first part who shall become insolvent or unable to make punctual payments & also may make any such agreement or arrangement as shall be deemed reasonable with any person possessing any security given by the said parties of the first part upon any estate or other property of or holder by him or by any creditor of his by way of mortgage or pledge for money, or with any person having a lien on any such property by virtue of any attachment, levy, bailment or otherwise in order to procure such estate or property to be exonerated from the lien or charge created thereon & also may sell all or any part of the trust property necessary for the payment of outstanding debts for money *for money* to be paid on a future day or on credit, or for any security by way of Bill of Exchange or otherwise as the said Trustee shall think expedient & may compromise all matters which may be in dispute or submit the same to arbitration & may sell & convert into money any contingent interest & securities which cannot be immediately enforced with a prospect of advantage & all

debts which shall be deemed bad or doubtful or which cannot be collected in a reasonable time. And it is further agreed by & between all of the parties to these presents that the said Trustee named herein or his representatives, assigns or successors shall not be chargeable or accountable for any other property than what he or they shall actually receive by virtue of these presents, nor liable to make good any losses that shall happen in the management, sale or disposal of said Trust Estate without the wilful neglect or default of the said Trustee.

And the said party of the second part doth hereby covenant with the said parties of the first part that he will execute & perform the trusts hereby created to the best of his judgment & discretion it being expressly understood by all the parties hereto that the said party of the second part may assign & transfer the property conveyed to him by this instrument at any time that he may deem proper to such person as he may think competent to execute the trusts created thereby to be held by the person to whom he may so convey & transfer the same upon the same terms & in trust for the same purposes as are declared in this conveyance to him without being held accountable for the acts & doings of the person to whom he may make such conveyance & transfer.

In testimony whereof the said parties have set their hands & seals this fourteenth day of June,

A. D. One thousand eight hundred & sixty.

A. KEOHOKALOLE, [Seal]

K. KAPAAKEA, [Seal]

CHAS. R. BISHOP, [Seal]

Executed in presence of:

THOMAS BROWN.

Honolulu, Oahu,

June 14th, 1860,—ss.

Personally appeared before me this day A. Keohokalole & her husband K. Kapaaakea and Chas. R. Bishop, parties to the foregoing instrument & severally acknowledged that they executed the same for the uses & purposes therein set forth. And the said A. Keohokalole on a private examination separate & apart from her husband declared that she executed the same of her own free will & accord & without fear or compulsion of her said husband.

Thomas Brown, Registrar of Conveyances. Rec'd. & Comp'd. this 14th day of June, A. D. 1860 at 25 Minutes past 3 o'clock P. M. Thomas Brown, Registrar of Conveyances.

Office of the Registrar of Conveyances.

Honolulu, Hawaii, October 17, 1918.

The foregoing is a true copy of record, recorded in the Office of the Registrar of Conveyances of the Territory of Hawaii, in Book 13, Pages 58–61.

Attest: [Seal] P. H. BURNETTE,
Registrar of Conveyances for the Territory of
Hawaii.

[Endorsed]: L. C. P No. 283. Received in Evidence, Oct. 25, 1918, and Marked Resp. Exhibit 11. A. V. Hogan, Registrar.

Certified Copy Trust Deed. A. Keohokalole & Hsb. to Chas. R. Bishop, Tr. Dated June 14, 1860. Recorded in Book 13, Pages 58-61. Registry of Conveyances for the Territory of Hawaii at Honolulu.

Contestant's Ex. "11." No. 1212. Recd and Filed in the Supreme Court August 14, 1919, at 2:00 P. M. J. A. Thompson, Clerk.

No. 3588. United States Circuit Court of Appeals for the Ninth Circuit. Filed Oct. 14, 1920. F. D. Monckton, Clerk.

Respondent's Exhibit No. 12.

DEED OF PARTITION.

(Stamped.)

An Indenture of Four Parts made this first day of July, in the year one thousand eight hundred and seventy, between John O. Dominis and Lydia K. Dominis, his wife, of the first part, Likelike of the second part, David Kalakaua and Kapiolani his wife, of the third part and W. P. Keahoolewa by his Guardian R. Keeliikolani, of the fourth part,

Whereas, Lydia K. Dominis, Likelike, David Kalakaua and W. P. Keahoolewa, Children of C. Kapaakea and Ane Keohokalole both deceased are the heirs at law of Ane Keohokalole deceased and entitled as such Heirs at Law as tenants in common in and to the following described Real Estate situate in the Hawaiian Islands, to wit:

"Keahuolu" situate in North Kona, Hawaii, "Kapaakea and Kapiwai" situate in Puna, "Puna" situate in Puna, Hawaii, "Pau" situate in Pololu, Hawaii "Paeohi" situate in Lahaina, Maui. "Kioloa" situate in Kau, Hawaii. "Puamana" situate in Lahina, Maui, and

Whereas the said parties have agreed to Partition the above described property of which they are now jointly seized in possession their demesne as of fee, of and in the said lands and premises hereinbefore mentioned part and parcel of the Estate of their mother Ane Keohokalole deceased which is now subject to distribution.

Now this Indenture witnesseth: That the said Lydia K. Dominis by and with the consent of her husband John O. Dominis, Likelike, David Kalakua and R. Keeliikolani, Guardian of W. P. Keahoolewa a minor and for and in his behalf do by these presents make a full perfect and absolute partition of the said lands and premises aforesaid to and amongst them the said Lydia K. Dominis, Likelike, David Kalakua and W. P. Keahoolewa in four parts to be divided in manner and form following, that is to say, that the said Lydia K. Dominis and her heirs and assigns shall have and enjoy to the only use and behoof of her the said Lydia K. Dominis her heirs and assigns, all that certain tract, piece and parcel of land situate in the District of North Kona, Island of Hawaii and known and called "Keahuolu" with the appurtenances for the full part purparty and portion of the said Lydia K. Dominis of in and to all and every the premises

hereinbefore mentioned held by the said Lydia K. Dominis, Likelike, David Kalakaua and W. P. Keahoolewa as heirs at Law of Ane Keohokalole deceased.

And that the said Likelike her heirs and assigns shall have and enjoy to the only use and behoof of her the said Likelike her heirs and assigns, All those certain tracts pieces and parcels of land situate in Oahu and known and called "Kapaakea and Kapiwai" with the appurtenances for the full part purparty and portion of the said Likelike of in and to all and every the premises hereinbefore mentioned held by the said Likelike, Lydia K. Dominis, David Kalakaua and W. P. Keahoolewa as heirs at Law of Ane Keohokalole deceased.

And that the said W. P. Keahoolewa his heirs and assigns shall have and enjoy to the only use and behoof of him the said W. P. Keahoolewa his heirs and assigns all those certain tracts, pieces and parcels of land situate in the District of Puna, Island of Hawaii, and known and called "Puna" and also the land called "Pau" in Pololu, Island of Hawaii, and also the land called "Paeohi" in Lahaina, Island of Maui, with the appurtenances for the full part, purparty and portion of the said W. P. Keahoolewa of in and to all and every the premises hereinbefore mentioned held by the said W. P. Keahoolewa, Lydia K. Dominis, Likelike, and David Kalakaua as heirs at Law of Ane Keohokalole deceased.

And that the said David Kalakaua his heirs and assigns shall have and enjoy to the only use and

benefit of him the said David Kalakaua his heirs and assigns, All those certain tracts and parcels of land situate lying and being in the District of Kau, Island of Hawaii and known and called "Kioloa" and also "Puamana" situate in Lahaina, Island of Maui, with the appurtenances for the full part, purparty and portion of the said David Kalakaua of in and to all and every the premises hereinbefore mentioned held by the said David Kalakaua, Lydia K. Dominis, Likelike and W. P. Keahoolewa as heirs at Law of Ane Keohokalole deceased.

And the said Likelike, David Kalakaua and R. Keeliikolani, Guardian of W. P. Keahoolewa do by these presents give, grant, assign, release and confirm to the said Lydia K. Dominis and her heirs the said land and premises called "Keahuolu" aforesaid and all the estate, right, title and interest which the said Likelike, David Kalakaua and W. P. Keahoolewa have or either of them have or may or ought to have, of in or to the said lands and premises or any part or parcel thereof.

To have and to hold to the said Lydia K. Dominis her heirs and assigns to the only use and behoof of the said Lydia K. Dominis, her heirs and assigns forever. And the said Lydia K. Dominis by and with the consent of her husband, John O. Dominis, David Kalakaua and R. Keeliikolani, Guardian of W. P. Keahoolewa do by these presents, give, grant, assign, release and confirm to the said Likelike and her heirs the said above described lands and premises called "Kapaakea" and "Kapiwai" situate as aforesaid and all the estate, right, title and interest

which the said Lydia K. Dominis, David Kalakaua and W. P. Keahoolewa have or either of them hath or may or ought to have of or in or to the said lands and premises known as "Kapaakea" and "Kapiwai" as aforesaid.

To have and to hold to the said Likelike her heirs and assigns to the only use and behoof of the said Likelike her heirs and assigns forever. And the said Lydia K. Dominis by and with the consent of her husband John O. Dominis, Likelike and Keeli-ikolani Guardian of W. P. Keahoolewa do by these presents give, grant, assign release and confirm to the said David Kalakaua and his heirs the said above mentioned lands and premises known and called "Kioloa" and "Puamana" situate as aforesaid and all the estate, right, title and interest which the said Lydia K. Dominis, Likelike and W. P. Keahoolewa have or either of them hath or may or ought to have of in or to the said lands and premises known and called "Kioloa" and "Puamana" situate as aforesaid.

To have and to hold to the said David Kalakaua his heirs and assigns to the only use and behoof of the said David Kalakaua his heirs and assigns forever. And the said Lydia K. Dominis by and with the consent of her husband John O. Dominis, Likelike and David Kalakaua do by these presents, give, grant, assign, release and confirm to the said W. P. Keahoolewa and his heirs the said above named tracts of land called "Puua" situate in Puna and "Pau" situate in Pololu, Hawaii, and also "Paeohi" situate in Lahaina, Maui and all the estate, right,

title and interest which the said Lydia K. Dominis, Likelike and David Kalakaua have or either of them hath or may or ought to have of in or to the said lands and premises known and called "Puua," "Pau" and "Paeohi" situate as aforesaid.

To have and to hold to the said W. P. Keaholewa his heirs and assigns to the only use and behoof of the said W. P. Keaholewa his heirs and assigns forever. And the said Kapiolani, wife of David Kalakaua in consideration of the sum of one dollar to her paid the receipt whereof is hereby acknowledged doth hereby release unto the said Lydia K. Dominis, Likelike and W. P. Keaholewa their and each of their heirs and assigns, all her right and title of Dower in the lands and premises this day given, granted, assigned, released and confirmed to them and each of them by these presents.

In witness whereof the parties to these presents have hereunto set their hands and seals the day and year first above written.

Signed, Sealed and Delivered in the presence of

JNO. O. DOMINIS. [Seal]

L. K. DOMINIS. [Seal]

L. M. KAPAAKEA. [Seal]

D. KALAKAUA. [Seal]

KAPIOLANI. [Seal]

R. KEELIKOLANI. [Seal]

Register Office, Oahu, ss. On this 5th day of July, A. D. 1870, personally appeared before me John O. Dominis and L. K. Dominis his wife, and L. M. Kapaaakea parties to the foregoing instrument who

severally acknowledged that they had executed the same for the uses and purposes therein set forth.

THOMAS BROWN,
Registrar of Conveyances.

Register Office, Oahu,—ss. On this 6th day of July, A. D. 1870, personally appeared before me David Kalakaua who acknowledged that he had executed the foregoing instrument for the uses and purposes therein set forth.

THOMAS BROWN,
Registrar of Conveyances.

Register Office, Oahu,—ss. On this 7th day of July, A. D. 1870, personally appeared before me Kapiolani who acknowledged that she had executed the foregoing instrument for the uses and purposes therein set forth.

THOMAS BROWN,
Registrar of Conveyances.

Personally appeared before me this 24th day of August, A. D. 1870, R. Keelikolani who acknowledged that she had executed the foregoing instrument for the purposes therein set forth.

CHARLES FREDERICK HART,
Circuit Judge 3rd J. D.

Recorded & Compared this 1st day of September, A. D. 1870 at 11 o'clock A. M.

THOMAS BROWN,
Registrar of Conveyances.

Office of the Registrar of Conveyances.

Honolulu, Hawaii, October, 17, 1918.

The foregoing is a true copy of record, recorded in the Office of the Registrar of Conveyances of

the Territory of Hawaii, in Book 30, Pages 364-367.

Attest: [Seal] P. H. BURNETTE,
Registrar of Conveyances for the Territory of
Hawaii.

[Endorsed]: L. C. P. No. 283. Received in Evidence, Oct 25, 1918, and Marked Resp. Exhibit 12.
A. V. Hogan, Registrar.

Certified Copy. Partn. Deed. L. M. Kapaakea et als. With Lydia K. Dominis. Dated July 1, 1870. Recorded in Book 30, Pages 364-367. Registry of Conveyances for the Territory of Hawaii at Honolulu.

Contestant's Ex. "12" No. 1212. Rec'd and filed in the Supreme Court. Aug. 14, 1919, at 2:00 P. M.
J. A. Thompson, Clerk.

